# MONTANA LEGISLATIVE HISTORY

Chapter 482 19 95

Bill H _____ S 144 Original bill & history ____C

H. Committee on Agriculture, Livestock & Irrigation

Hearing Date(s) March ✓C

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_____ ____C

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Date Out _____ ____C

S. Committee on Agriculture, Livestock & Irrigation

Hearing Date(s) Jan 22 ✓C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

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|---|---|---|---|
| 1/31 | REFERRED TO LOCAL GOVERNMENT | | |
| 3/02 | HEARING | | |
| 3/24 | TABLED IN COMMITTEE | | |
| | DIED IN COMMITTEE | | |

SB 143 INTRODUCED BY BAER, ET AL.

SUBMIT TO QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 2, OF THE MONTANA CONSTITUTION TO ASSERT MONTANA'S RIGHT TO REJECT FEDERAL MANDATES, ORDERS, DIRECTIONS, OR COMMANDS DERIVED FROM POWERS NOT ENUMERATED IN OR OTHERWISE GRANTED BY THE UNITED STATES CONSTITUTION

| | | | |
|---|---|---|---|
| 1/13 | INTRODUCED | | |
| 1/13 | FIRST READING | | |
| 1/13 | REFERRED TO JUDICIARY | | |
| 1/16 | HEARING | | |
| 1/19 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 1/20 | 2ND READING PASSED AS AMENDED | 31 | 19 |
| 1/21 | ON MOTION RULES SUSPENDED TO ADD ADDITIONAL SPONSOR | | |
| 1/21 | 3RD READING PASSED | 31 | 19 |
| | TRANSMITTED TO HOUSE | | |
| 1/23 | FIRST READING | | |
| 1/23 | REFERRED TO JUDICIARY | | |
| 2/06 | HEARING | | |
| 3/23 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/29 | 2ND READING CONCURRED AS AMENDED | 63 | 37 |
| 3/30 | 3RD READING CONCURRED | 60 | 37 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 4/05 | 2ND READING AMENDMENTS CONCURRED | 25 | 22 |
| 4/06 | 3RD READING AMENDMENTS CONCURRED | 33 | 17 |
| 4/06 | COMBINED 3RD READING VOTE FAILED | 93 | 54 |
| | THIS BILL DID NOT RECEIVE 2/3 VOTE OF LEGISLATURE AS REQUIRED FOR BILLS PROPOSING AMENDMENTS TO CONSTITUTION | | |

SB 144 INTRODUCED BY BROOKE, ET AL.

CLOSE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS

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|---|---|---|---|
| 1/16 | INTRODUCED | | |
| 1/16 | FIRST READING | | |
| 1/16 | REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION | | |
| 1/16 | FISCAL NOTE REQUESTED | | |
| 1/23 | FISCAL NOTE RECEIVED | | |
| 1/24 | FISCAL NOTE PRINTED | | |
| 1/27 | HEARING | | |
| 2/13 | HEARING | | |
| 2/13 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/14 | 2ND READING PASSED AS AMENDED | 49 | 0 |
| 2/15 | 3RD READING PASSED | 50 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 2/20 | FIRST READING | | |
| 2/20 | REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION | | |
| 3/07 | HEARING | | |
| 3/24 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/27 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/28 | 2ND READING CONCURRED | 98 | 1 |
| 3/29 | 3RD READING CONCURRED | 97 | 3 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 4/04 | 2ND READING AMENDMENTS CONCURRED | 49 | 0 |

| | | | |
|---|---|---|---|
| 4/05 | 3RD READING AMENDMENTS CONCURRED | 50 | 0 |
| 4/08 | SIGNED BY PRESIDENT | | |
| 4/10 | SIGNED BY SPEAKER | | |
| 4/10 | TRANSMITTED TO GOVERNOR | | |
| 4/14 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 487 | | |
| | EFFECTIVE DATE: 04/14/95 | | |

SB 145 INTRODUCED BY KEATING, ET AL.

RELATE TO PUBLIC RESOURCE LAND

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|---|---|---|---|
| 1/16 | INTRODUCED | | |
| 1/16 | FIRST READING | | |
| 1/16 | REFERRED TO NATURAL RESOURCES | | |
| 2/06 | HEARING | | |
| 2/11 | COMMITTEE REPORT—BILL PASSED | | |
| 2/13 | 2ND READING DO PASS MOTION FAILED | 20 | 30 |
| 2/13 | 2ND READING INDEFINITELY POSTPONED | 30 | 20 |

SB 146 INTRODUCED BY ECK, ET AL.

ADOPT UNIFORM HEALTH CARE DECISIONS ACT

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|---|---|
| 1/16 | INTRODUCED |
| 1/16 | FIRST READING |
| 1/16 | REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY |
| 2/01 | HEARING |
| 2/01 | TABLED IN COMMITTEE |
| 2/23 | MISSED TRANSMITTAL DEADLINE FOR 45TH DAY |
| | DIED IN COMMITTEE |

SB 147 INTRODUCED BY HERTEL

GENERALLY REVISE WATER RESOURCE ADMINISTRATION OF STATE WATER PROJECT LAWS

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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|---|---|---|---|
| 1/16 | INTRODUCED | | |
| 1/16 | FIRST READING | | |
| 1/16 | REFERRED TO NATURAL RESOURCES | | |
| 1/16 | FISCAL NOTE REQUESTED | | |
| 1/20 | FISCAL NOTE RECEIVED | | |
| 1/23 | FISCAL NOTE PRINTED | | |
| 1/25 | HEARING | | |
| 2/10 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/11 | 2ND READING PASSED AS AMENDED | 49 | 0 |
| 2/13 | 3RD READING PASSED | 50 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 2/14 | FIRST READING | | |
| 2/15 | REFERRED TO NATURAL RESOURCES | | |
| 3/03 | HEARING | | |
| 3/09 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/11 | 2ND READING CONCURRED | 91 | 3 |
| 3/14 | 3RD READING CONCURRED | 97 | 3 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 3/18 | 2ND READING AMENDMENTS CONCURRED | 46 | 0 |
| 3/20 | 3RD READING AMENDMENTS CONCURRED | 50 | 0 |
| 3/25 | SIGNED BY PRESIDENT | | |
| 3/25 | SIGNED BY SPEAKER | | |
| 3/27 | TRANSMITTED TO GOVERNOR | | |

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0144, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act implementing recommendations of the Upper Clark Fork Basin Water Management Plan developed by the Upper Clark Fork Basin Steering Committee in accordance with the legislative mandate contained in SB434 passed by the 1991 legislature (MCA 85-2-335 to 338). Specifically, this act closes the upper Clark Fork Basin to new water rights appropriations (with exceptions), provides for a 10-year instream flow pilot program in this basin, provides for attorney fees to the prevailing party in water use permit and change proceedings, and amends the duties of the Upper Clark Fork Basin Steering Committee. Most elements of the plan are strictly voluntary in nature and do not impose additional regulations or requirements on the public, business or industry.

ASSUMPTIONS:
1. The Executive present law base serves as the point from which to calculate any fiscal impact due to this proposed legislation.
2. Department of Health and Environmental Sciences (DHES) staff time and operating expenses associated with implementation of the water management plan proposed by this bill can be absorbed in the present law base budget.
3. DHES participation in resolution of water use conflicts via this continuing planning process will fall within the existing responsibilities and goals of Water Quality Division programs.
4. Department of Natural Resources Conservation (DNRC) staff time and operating expenses associated with implementation of the water management plan proposed by this bill can be absorbed in the present law base budget.

FISCAL IMPACT:
None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Montana District Courts may experience an increase in case load, and the resultant costs, as a result of this legislation. Based on historical information, this increase would be minimal.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
This legislation will provide for more efficient use of existing resources through consensus-based, collaborative water resources planning. A positive impact on water quality and quantity in the Upper Clark Fork basin is expected to result.

Dave Lewis 1-22-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Vivian Brooke
VIVIAN BROOKE, PRIMARY SPONSOR DATE

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

**Call to Order:** By **CHAIRMAN CHUCK SWYSGOOD**, on January 27, 1995, at 1:00 p.m.

ROLL CALL

**Members Present:**
Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Don Hargrove (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Bob Pipinich (D)

**Members Excused:** Sen. Gerry Devlin, Vice Chairman (R)

**Members Absent:** None

**Staff Present:** Doug Sternberg, Legislative Council
Jennifer Gaasch, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing: SB 144
Executive Action: None

*{Tape: 1; Side: A; Approx. Counter: ; Comments: .}*

HEARING ON SB 144

Opening Statement by Sponsor:

**SENATOR VIVIAN BROOKE, SD 33**, from **Missoula**, presented SB 144. **SEN. BROOKE** stated that SB 144 was the product of a long year's work and the committee was put together after the 1991 legislation. There was a book given to each of the senators at their desks on the Senate floor. **SENATOR BROOKE** stated that there was a management proposal and SB 144 [illegible]

committee through the next interim. The committee consisted of 21 members representing varied interests concerning the Clark Fork.

**Proponents' Testimony:**

**Stan Bradshaw** passed out a summary of the meetings held by the Upper Clark Fork Steering Committee. **Mr. Bradshaw** gave a background and history of how the process started and how they ended up with SB 144. Mr. Bradshaw stated that it began with reservation applications by the Department of Fish, Wildlife, and Parks and the Granite County Conservation District back in the late 1980's. The applications were filed and people began to choose sides and there were a lot of objectors to the departments administering flow applications; also many objectors for applications for storage sites. A hearing was to occur, but the hearings officer suggested there should be a settlement conference instead. Northern Lights Institute acted as the mediator for the conference and a series of meetings were held in 1990. People very quickly became aware of the money that was to be spent on lawyers. They wanted to solve the problem another way, so they had a bill proposal introduced by **SENATOR BECK** in the 1991 legislature. This resulted in a four year planning process on the Upper Clark Fork Basin. The process entailed 80 meetings in the basin, including the meetings of the steering committee appointed by the Department of Natural Resources. There were public meetings on an initial work plan, meetings within sub basins, **(EXHIBIT #1)** and meetings on the draft plan. There were two main ideas: the first was they wanted to protect existing water rights at any cost; the second was to ensure that the plan evolved from the basin up. This was to come from the work of the committee and the suggestions that were given to them. The draft plan was the result. **Mr. Bradshaw** stated there was much time spent in an effort to understand other everyone's views.

**Eugene Manley, member of the steering committee, from Drummond MT.**, read his written testimony and submitted a few letters. **(EXHIBIT #2)**

**Holly Franz**, representing the **Montana Power Company**, read her written testimony. **(EXHIBIT #3)**

**Land Lindberg, member of the steering committee**, read his written testimony. **(EXHIBIT #4)**

**Ollie Uland, member of the steering committee**, stated that they support SB 144 except that groundwater use permits that can supplement surface water uses be excluded from the basin closure, reference 85-2-336 of SB 144. **(EXHIBIT #5)**

**Jo Brunner, member of the steering committee**, read her written testimony. **(EXHIBIT #6)**

**Sandy Stash, a member of the steering committee who was representing Arco**, stated that Arco is the company that has the task of cleaning up the Clark Fork. She stated that the committee was a good way to solve problems. **Ms. Stash** said the Super Fund exemption needed an additional 5 years to obtain necessary water to complete the clean-up.

**Mark Simonich, representing the Department of Natural Resources and Conservation**, submitted his written testimony. **(EXHIBIT #7)**

**Steve Fry, a member of the steering committee and representing Washington Water Power**, stated they recommend the committee to support SB 144 and to recognize the efforts of the committee. The bill provides the mechanism to draft a comprehensible water management plan that addresses many of the issues. It would not be permanent and it would have local input.

**Bruce Farling, representing Montana Trout Unlimited**, urged the committee's support for SB 144. **Mr. Farling** asked the committee to study **EXHIBIT #1**. He stated that the effort was critical to the state of Montana and dissolving water rights. He submitted a letter. **(EXHIBIT #8)**

**Mike Murphy, representing Montana Water Resources Association**, stated that they support SB 144 and are convinced that this should be the approach taken to address water issues and resolve the situation. They had some concern about groundwater closure.

**REPRESENTATIVE LIZ SMITH, HD 66, Deer Lodge**, stated that she supported SB 144.

**Dennis Workman, representing Fish, Wildlife and Parks**, submitted his written testimony. **(EXHIBIT #9)**

**Gary Ingman, member of the steering committee representing Montana Department of Health an Environmental Sciences**, submitted his written testimony. **(EXHIBIT #10)** He stated that they support SB 144.

**Bob Fox, representing the Environmental Protection Agency (EPA) and manager of the Super Fund project in the State of Montana**, stated that the EPA supports SB 144.

**Jim Dinsmore, representing Granite Conservation District**, stated that he supports SB 144.

**Geoffrey Smith, representing the Clark Fork Pend Oreille Coalition**, submitted his written testimony and stated that he supported SB 144. **(EXHIBIT #11)**

**SENATOR TOM BECK, member of the steering committee**, stated that he supported SB 144. **SEN. BECK** said there was a possibility of a few minor amendments being added.

**Opponents' Testimony**:

**Ron Kelly, member of the steering committee**, stated that he was opposed to SB 144. He was opposed to the bill in several areas such as the closure of groundwater. He believes that it was taking away personal property rights, he would be in favor of the groundwater being restricted as it currently is. **Mr. Kelly** stated that he was opposed to a Super Fund exemption. If the basin was over-appropriated, he believed that there would be additional water to be appropriated. He does not believe that it should be either open or closed to everyone. The instream flow portion of the bill would make instream flow a legal use of water. He stated if it would be done in a certain area of Montana, why not in the entire state. **Mr. Kelly** stated his biggest concern was SB 144 attempts to perpetuate the committee in the form that it currently stands. He stated that he was opposed to the make-up of the committee. **Mr. Kelly** stated the committee gives full representation of the basin area. He stated that there were persons from Missoula, which is not on the Clark Fork, and there is no one from the Department of Agriculture. **Mr. Kelly** asserted that the bill stated anyone who prevails in a water dispute can recover their legal fees from the opposing party. He said that was the way he understood it. It was not only for the Clark Fork Basin, but for the entire State of Montana. He urged the committee to take a close look at that part of the bill.

**Larry Brown, representing the Agriculture Preservation Association**, stated that their member's biggest concern of it's members, was that the result of this situation might carry on to other basins. He stated they were in favor of local analysis, and that it was important to look at ground and surface water relationships. **Mr. Brown** said they do not support the bill because of the apparent degradation of the multiple uses in the instream flows and the bill does not clearly define how they relate to the actual needs of the fish. They are concerned with the technical information on the aquatic insects and the fish. The reimbursement issue was another concern. Will the state or taxpayer have to pay for reimbursement for some organization? **Mr. Brown** expressed a concern with the effect on water rights. They stand opposed to SB 144.

**Evan Barrett, representing the Butte Local Development Corporation**, stated the bill was well-intentioned, but needed changes. There is no representation of industry on the steering committee. **Mr. Barrett** noted there was a significant piece of land suited to heavy industrial involvement in the Upper Clark Fork as far up in Silver Bow County as possible. They see this as much more than Micron. He stated they have a strategy to have value-added projects which they have been working on and they need water. He also said there was not a distinction made between the consumption of water or the temporary use of water. There needed to be consideration given to the industry of Montana.

**Lee Jacobson, a rancher and irrigator from Deer Lodge**, stated that he opposed SB 144 because of the closure of groundwater. Agricultural and industrial wells should be allowed to continue under existing rules. Also, that Arco should not be given any exemptions. He stated agriculture and the local people needed a greater representation on the committee.

**Don Tamke, rancher and irrigator from Deer Lodge**, stated he was opposed to the closure of groundwater. **Mr. Tamke** stated there are around five wells in his area that produce a great amount of water and there has never been a dispute among them. He said he was also opposed to not allowing a person the right to drill a well if they own their own property then it should be their privilege to have a well. **Mr. Tamke** also declared he was opposed to the instream flow portion of SB 144. The water rights need to be determined before the process is started. He stated that he was opposed to the super fund exception. **Mr. Tamke** stated that agriculture not represented properly on the steering committee. He believed in storage, but no one on the committee represented those who own dams.

**Rody Holman, representing Butte Silver Bow**, said he had concerns with how SB 144 was drafted. His first concern was whether all stake-holders were represented. He stated this meant lack of employment opportunities for Montanans. He said that industrial employment could be prohibited by SB 144.

**Don Beck, a rancher from Garrison**, stated that groundwater should be left open as well as instream flow. **Mr. Beck** stated that he did not believe that ranchers were very well represented on the steering committee.

**Informational Testimony**:

None

**Questions From Committee Members and Responses:**

**SENATOR DON HARGROVE** asked **Mark Simonich** from the **Department of Natural Resources** about the credibility of the entire study. He also asked about the appointment of the steering committee. **Mr. Simonich** replied that the committee was appointed 4 years ago by the previous administration. He stated that after the process had started and there were complaints, he did not believe that it would be right for him to appoint new members to the committee. He stated that the committee continually reached out to the local people with the meetings. There would be a new committee appointed if SB 144 is passed.

**SENATOR RIC HOLDEN** asked **Sandy Stash** to explain why there were 5 more years of water needed and what are they doing with the water? **Ms. Stash** replied that Arco's business interest was to clean up the Clark Fork. She replied that they needed the water to clean up areas such as the Warm Springs ponds and this would create clean water for all uses.

**SENATOR REINY JABS** asked **Stan Bradshaw** whether there was no room for industrial growth would Micron be dead if SB 144 passed? **Mr. Bradshaw** replied that there were two ways to acquire a water right: by purchasing one from someone who has one or by applying for a permit. He stated they may have to purchase a water right from someone else. SB 144 would prevent them from drilling a new well and getting a permit. **SENATOR JABS** asked if someone would be willing to sell the water? **Mr. Bradshaw** answered that there was no way to know.

**SENATOR GREG JERGESON** asked **Evan Barrett** that there has been a four year process and meetings going on all over the basin, and somehow, now, SB 144 should not be passed because of Micron? **Mr. Barrett** stated that he recognized that there are items in the bill that would affect Micron, but they would also affect other projects. He was not recommending to kill the bill, he stated that it just needs some amendments.

**SENATOR TOM BECK** asked **Holly Franz** if it was the intent for the steering committee to continue to operate? **Ms. Franz** replied that was correct, although the duties of the committee have changed.

**SEN. BECK** asked **Holly Franz** about the appropriation of the $60,000 to $70,000 from the long-range building program. Would that money not be spent better on storage instead of funding the committee? **Ms. Franz** replied that she was not sure how far the money would get in storage. That was part of continuing the committee's duties. She said that the money would be spent to operate the committee better so that it would be successful.

**CHAIRMAN SWYSGOOD** asked **Holly Franz** about the closure of groundwater, and looked at the exceptions, and those that have been excluded. Why was industrial development excluded in the decision? **CHAIRMAN SWYSGOOD** asked if there were data to support the contention that groundwater has an affect upon surface water and, if not, why was groundwater being put in an closure? **Ms. Franz** replied that the problem was they do not have information on the basin. Based on the concerns that were heard, there was some connection. This would protect private property rights of existing senior water right holders. The exception was for cities to have water. The industry was talked about, but if they were to have an exception, then agriculture was to have an exception. **CHAIRMAN SWYSGOOD** asked if there was another basin that had a closure? She stated there was nothing to the extent of this basin.

Closing by Sponsor:

**SENATOR BROOKE** said there were still some issues that were complex. She stated **REPRESENTATIVE DON LARSON** of the Big Blackfoot area was a strong proponent of SB 144. **SEN. BROOKE** noted that industry was represented by Arco, and an invitation was extended to Washington Corporation, which they declined. She stated there was not a lot of stature when it was started and now people are realizing how important it is. She believed there were around seven people representing agriculture and there was not a representative of an actual agricultural association. She thought it was better represented by those actually in agriculture. The committee was an action committee and it was an open meeting process. There would have to be compromise. There was a small amendment that has been proposed and would be presented during executive action. **SEN. BROOKE** quoted a water rights holder, "This bill doesn't address everything. We were looking at the wants of today, but we really need to look at the wants of tomorrow."

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL DATE 1-27-95

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| GERRY DEVLIN, VICE CHAIRMAN | | | X |
| TOM BECK | X | | |
| DON HARGROVE | X | | |
| RIC HOLDEN | X | | |
| REINY JABS | X | | |
| GREG JERGESON | X | | |
| LINDA NELSON | X | | |
| BOB PIPINICH | X | | |
| CHUCK SWYSGOOD, CHAIRMAN | X | | |
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SENATE AGRICULTURE
EXHIBIT NO. 1
DATE 1-27-95
BILL NO. SB 144

# Local Public Meetings of the Upper Clark Fork River Basin Steering Committee, 10/91 to 12/94

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## *Deer Lodge - 28 meetings with public comment or participation*

* 26 steering committee meetings
* 1 basin closure workshop for the public
* 1 draft plan public meeting

## *Anaconda - 9 meetings with public participation*

* 1 work plan public meeting
* 7 watershed committee public meetings
* 1 draft Plan public meeting

## *Ovando/Greenough/Potomac - 10 meetings with public participation*

*1 work plan public meeting
* 8 watershed committee public meetings
* 1 draft plan public meeting

## *Drummond/Hall -10 meetings with public participation*

* 1 work plan public meeting
* 8 watershed committee public meetings
* 1 draft plan public meeting

## *Philipsburg - 9 public meetings with public participation*

* 1 work plan public meeting
* 7 watershed committee public meetings
* 1 draft plan public meeting

## *Missoula - 3 meetings with public participation*

* 1 work plan public meeting
* 1 watershed committee public meeting
* 1 draft plan public meeting

Plus: Watershed tours of the Flint Creek and Big Blackfoot watersheds, and the Georgetown/Silver Lake water system.

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 1-27-95
BILL NO. SB144

Eugene Manley

WE ARE DEFINING THE BASIS OF THE FUTURE OF MONTANA'S WATER RESOURCES NOW, AND I FEEL THAT BASIS IS SERIOUSLY FLAWED, BECAUSE UP UNTIL NOW WE SEEM TO HAVE IGNORED THE IMPLICATIONS OF RETURN FLOWS.

I FIND IT RATHER REMARKABLE THAT IN THE STORAGE SECTION OF THE STATE WATER PLAN I COULD FIND ONLY ONE SENTENCE ON NON-STRUCTURAL STORAGE. THE STATISTICS GIVEN TO ME ARE THAT WE HAVE 2,500,000 IRRIGATED ACRES IN MONTANA. THIS MEANS, IN THE EARLY IRRIGATION SEASON, DURING THE PERIOD UP TO JULY, WE ARE PUTTING INTO OUR AQUIFERS WELL OVER 5,000,000 ACRE FEET OF WATER. DURING THE IRRIGATION SEASON WE DIVERT MORE THAN 12,500,000 ACRE FEET OF WATER, SOME 5,000,000 ACRE FEET RETURNS IN A VERY SHORT TIME.

DOESN'T NON-STRUCTURAL STORAGE DESERVE MORE ATTENTION THAN IT IS NOW GETTING? SHOULDN'T WE EXERT MORE EFFORTS TOWARDS A BETTER UNDERSTANDING OF RETURN FLOWS; WHAT CREATES THEM, WHERE THEY ARE, AND SINCE THEY BECOME SUCH AN INTEGRAL PART OF A BASIN SYSTEM, HOW WE CAN MANAGE THEM BETTER?

THE REASON WHY FLINT CREEK IRRIGATORS REQUESTED A GRANT IS BEST DEFINED IN THE FIRST PARAGRAPH OF THE TECHNICAL ASSESSMENT SECTION OF PROJECT NO. 14 OF THE GRANT REQUESTS AS FOLLOWS:
"FLINT CREEK IRRIGATORS HAVE BEEN FRUSTRATED, OVER THE YEARS, BY DECISIONS MADE IN THEIR BASIN WITH LITTLE CONSIDERATION FOR RETURN FLOWS. THE IMPORTANCE OF RETURN FLOWS TO FISH HABITAT AND TIMING FOR HYDROPOWER ARE NOT DOCUMENTED TO DATE. ADDITIONALLY MANY FLINT CREEK IRRIGATORS ARE APPREHENSIVE OVER CONVERSION TO SPRINKLER SYSTEMS, WHICH HAVE DIFFERENT FLOW PATTERNS THAN GRAVITY IRRIGATION. RETURN FLOW DATA WILL ALLOW LOCAL WATER USERS TO BETTER MANAGE THEIR WATER SUPPLIES."

IT WILL ALSO HELP SOME OF US TO CONVINCE NON-BELIEVERS RETURN FLOWS DO REALLY EXIST, AND ALERT OTHER BASINS TO THE ROLE THEY CAN AND DO PLAY IN A BASIN SYSTEM. ALONG WITH THE THE UNDER-STANDING OF RETURN FLOWS WE MUST DEVELOP A BETTER UNDERSTANDING OF WHAT ADVOCATED PRACTICES CREATE IRRIGATION DEFICITS WITHIN A SYSTEM. WE MUST THEN CORRELATE THE UNDERSTANDINGS OF THESE TWO FACTORS IF WE ARE GOING TO HAVE GOOD MANAGEMENT WITHIN BASIN SYSTEMS. IF WE DO NOT DEVELOP THIS UNDERSTANDING WE WILL FOREVER TAX THE LOGISTICAL CAPACITY OF A BASIN SYSTEM BEYOND ITS DELIVERY CAPABILITIES.

BY IGNORING THE ABOVE TWO FACTORS WE ARE CREATING IRRIGATION DEFICITS AND FURTHER INSTREAM FLOW DEPLETIONS THAT MOST PROBABLY CAN NOT BE OVERCOME FOR THE REST OF THE IRRIGATION SEASON. WE ARE IN ESSENCE, IN THIS STATE, DESTROYING THE LOGISTICAL CAPACITY OF BASIN SYSTEMS TO SUPPLY WHAT WE DEMAND OF THEM FOR IRRIGATION, INSTREAM FLOW AND OTHER USES.

WE MUST DEVELOP A BETTER UNDERSTANDING OF THE INTERRELATION-SHIP OF STRUCTURAL AND NON-STRUCTURAL STORAGE AND HOW THEY CAN,

IF PROPERLY MANAGED, COMPLIMENT EACH OTHER TO THE EXTENT THEY CAN CREATE VOLUMES OF USAGE FAR EXCEEDING THE ORIGINAL STORAGE.

THE RESULTS OF THIS STUDY WILL HELP ADDRESS SOME OF THE MYTHS THAT EXIST ABOUT WHAT CONSTITUTES IN-EFFICIENT USE OF OF OUR WATER RESOURCES BY AGRICULTURE. TWO OF THOSE ARE: LARGER, LONGER CANAL WATER LOSES ARE INTOLERABLE, THE TRUTH OF THE MATTER IS THAT IF THEY ARE PUT INTO USE AS EARLY IN THE IRRIGATION SEASON AS POSSIBLE THE CANAL LOSES FILL THE AQUIFER SOONER AND THE RESULTING RETURN FLOWS WILL LAST LONG AFTER THE DIVERSION IS SHUT OFF.

SPRINKLING OFTEN TOUTED AS A WATER SAVING MEASURE OVER FLOOD IRRIGATION DEFINITELY REMOVES THE FLOW RATE AND VOLUME OF WATER PUT INTO OUR AQUIFERS.

IN OUR ADJUDICATION PROCESS WHICH IS SUPPOSED TO DECREE ALL OF THE BENEFICIAL USES OF WATER CREATED BEFORE 1973, WE ARE IGNORING THOSE WATERS THAT CREATE RETURN FLOWS SOONER AND SUSTAIN THEM LONGER.

WE HAVE SALVAGED WATER LAWS THAT UNINTENTIONALLY ENCOURAGE THE DESTRUCTION OF NON-STRUCTURAL STORAGE.

THESE ARE SOME OF THE CONCERNS I HAVE AND THAT IS WHY WE NOW HAVE AN ONGOING RETURN FLOW STUDY IN THE FLINT CREEK BASIN. THIS STUDY WILL HELP US DEVELOP SOLID DATA THAT WE CAN USE TO ADDRESS THE PROBLEMS I SEE IN THAT BASIN AND THROUGHOUT OUR STATE.

THIS RETURN FLOW STUDY, BECAUSE WE ARE SO DEPENDENT ON STORAGE, WILL HELP US FOCUS IN ON WHAT WE ARE NOT NOW UNDERSTANDING ABOUT STORAGE. MOST IMPORTANTLY, IF WE ARE EVER TO BUILD FUTURE STORAGE, IT WILL ONLY BE FEASABLE IF ALL THE BENEFICIARIES PAY THEIR FAIR SHARE. FOR INSTANCE IN 1988, OUR DRIEST YEAR EVER, SOME 250 CFS OF DECREED RIGHTS RECIEVED WATER FROM THE RETURN FLOWS OF OUR STORAGE FACILITY, INSTREAM FLOWS WERE ENHANCED, AND THREE DOWNSTREAM HYDROPOWER FACILITIES BENEFITED. NOT ONE PENNY IS RECEIVED FROM THESE BENEFICIARIES.

ONE OF THE MOST REFRESHING THINGS TO ME HAS BEEN MY WORK WITH TH BUREAU OF RECLAMATION IN THE FLINT CREEK RETURN FLOW STUDY. FOR THE FIRST TIME I FEEL I AM WORKING WITH A GROUP OF EXPERTS WHO UNDERSTAND MY CONCERNS AS EXPRESSED HEREIN AND OTHER CONCERNS TO LENGTHY TO DISCUSS HERE.

THE BUREAU OF RECLAMATION, THE EXPERTS IN WATER MANAGEMENT, WERE CONCERNED ENOUGH BY WHAT THEY HAD OBSERVED HAPPENING IN OTHER AREAS OF OTHER STATES AND WERE WILLING TO PUT THE RESOURCES THEY ARE PUTTING INTO THE FLINT CREEK RETURN FLOW STUDY. THEN, SHOULDN'T WE BE WILLING TO DEVELOP A BETTER UNDERSTANDING OF WHAT THE RAMIFICATIONS OF THIS STUDY ARE STATEWIDE?

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THERE NEED NOT, AND SHOULD NOT BE THE CONTINUING SKIRMISHES OVER WATER LEVELS IN MONTANA'S RIVERS AND STREAMS. WE ARE SPENDING FAR TO MUCH TIME AND ENERGY NARROWLY FOCUSING ON HOW TO SECURE WATER FOR INSTREAM FLOW. THIS, WHILE ALL AROUND US WE SHOULD SEE THAT WE ARE ENGAGED IN AN ADVOCACY OF PRACTICES, POLICIES, AND PROCEDURES THAT ARE AND WILL LEAD TO A FURTHER DE-WATERING OF OUR VALUABLE FISHERIES, AND IRRIGATED LANDS.

I WANT TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU, AND THE OPPORTUNITY TO SUBMIT THIS WRITTEN TESTIMONY.

Eugene Manley- Rancher near Drummond, Montana
Licensed Montana Ranch Broker
Water Rights Consultant
35 years Executive Secretary Allendale Irrigation Company
Member Upper Clark Fork Steering Committee

The two letters attached to this testimony are from KD Feeback, a geologist. Terry Voeller is a hydrologist with the DNRC and is working on the Flint Creek return flow study.

# WATER RIGHTS ENFORCEMENT

Some years in the future, when our final decrees are issued, determinations will have to be made as to how those decrees will be enforced so that all water right holders in the Upper Clark Fork River Basin will receive the flow rates in the priority they are entitled to. In the past we have only been concerned with our own decree within a sub-basin on a particular stream or one of its reaches.

We must now realize that there exists on the Clark Fork River large water rights owned by Washington Water Power and Montana Power. Washington Water Power(WWP) has rights at Noxon Rapids totaling 50,000 cubic feet per second, and these rights are filled on an average of only sixteen to nineteen days a year, generally in late May and early June during periods of high water. WWP's has one right of 35,000 cfs with a priority date of 1951, another one for 5,400 cfs with a priority date of 1959. Since the turbines at Noxon Rapids can handle an additional 9,600 cfs WWP was issued a water use permit in 1974 to increase hydropower generation in an amount not to exceed a total of 50,000 cfs.

While Washington Water Power's rights are large they are generally junior to most other rights in the Clark Fork Basin. Even though the rights are junior they are entitled to get those amounts of water which they are decreed when those waters are being used by someone else. Yet, when it comes to the enforcement of those rights, wherever they exist, might not that cost of enforcement outweigh the benefit derived, if the sole benefit is partial fulfillment of that right?

Within the area of the Upper Clark Fork River, Montana Power holds water rights at the Milltown dam generating facility of 2000 cubic feet per second with a priority date of 1904. This right can effect many of the rights on lands put under irrigation since that date. In some years there are days, even in June, when flow rates at Milltown fall below 2000 cfs. In July of 1988 average mean flow rate was 1197 cfs, in August it fell to 627 cfs. So in July Montana Power received 59.85% of its right, and in August 31.55%.

While Washington Water Powers rights are being adjudicated in basin 76N at Thompson Falls, and Montana Powers rights at Milltown in three basins: two Clark Fork River sub-basins (76G and 76M) and the Blackfoot (76F), Flint Creek and Rock Creek are also sources to supply for the above rights.

In the future, when our final decrees are issued, and we know what our rights are and their relationship to each other, and we reach a point where power generating rights fall below their adjudicated flow rates, what enforcement mechanism will be put

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in place?

To insure fairness to all water users in every basin and sub-basin in the Clark Fork River won't we have to create some system of enforcing all rights too what they are decreed in order to make sure each basin is contributing the amounts of waters to which the power companies are entitled?

Do we create a huge, expensive bureaucracy, and will all water right holders including; Murphy rights, power generation, instream flow rights if they exist, irrigation, and water quality demands share those costs on a prorated basis?

Will we start now, in some such organization such as the Upper Clark Fork River Steering Committee, to develop some innovative planning so as to avoid huge costs and major inconveniences in enforcing and administrating rights in the basin?

Will we be able to expand the Upper Clark Fork Management Plan to the point where; it will protect the integrity of the sub-basins as they presently exist in the Clark Fork?

Can we develop a plan so well conceived that we won't have to succumb to the dictates of the Federal Energy Regulatory Commission (FERC) after our final decrees are issued? My concern here is, that after our final decrees are issued, FERC may compel our two basin hydropower companies to enforce their rights even though they, and other users, may realize such enforcement is not in the best interest of overall management within the basin.

Eugene Manley- Member Upper Clark Fork Steering Committee

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

MARC RACICOT, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

PO BOX 202301
HELENA, MONTANA 59620-2301

January 19, 1995

Mr. Eugene Manley
15 Willow Tree Lane
Hall, MT 59837

Dear Eugene:

I would like to express my great appreciation for your testimony to the Long Range Planning Subcommittee regarding our Flint Creek Return Flow Study. Although I did not attend the testimony for the other grants, discussions with Rich Moy has lead me to believe we did very well in comparison with other applicants. If we succeed in obtaining our grant, it will be due in large part to the efforts put forth by you, Fred Parker, Jo Brunner, and the Montana Water Resources Association.

I look forward to working with you and the members of the Granite County Basin Watershed Resources Committee over the next two years. I hope you will continue your active role and appreciate very much your efforts in initiating this study. I hope that through this study, we can continue the efforts you have made to educate Montanans on the importance of non-structural storage.

Sincerely,

Terry Voeller

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12 October 1994

KD Feeback
PO Box 907
Lincoln, Montana 59639

Gerald Mueller, Facilitator
Upper Clark Fork Steering Committee
7165 Old Grant Creek Road
Missoula, Montana 59802

Good Day Gerald,

At the risk of being redundant, after last evenings meeting I remain concerned that the long term effects of in-stream flow may be deleterious to some drainages.

In-stream flow is a concept that will be added to stream management systems in Montana without doubt and I believe that most people approve of the idea. A dry watercourse is obviously not an acceptable state of affairs if it is a preventable condition.

The issue that concerns me was illustrated in different ways by several of the people that commented on the plan last night, but mainly by Eugene Manley when speaking of the Flint Creek drainage. He said something to the effect of "...the water management systems existing in the Flint Creek basin are the product of 130 years of planning and experimentation." As a corollary to that statement, the elderly gentleman at the front of the room brought up the article in the Monday (?) Missoulian about one million acres having been taken out of production due to purchase by wealthy out-of-state interests.

Many of the areas of contentious water issues in the Clark Fork Sub-Basins may eventually be faced with senior decreed rights being sold or leased for in-stream flow purposes. It is not obvious to me that the long term effects of declining non-structural storage from flood irrigating is well enough understood to plan for in-stream flows. Additionally, I am quite sure that the hydraulic characteristics of the unconfined aquifers in each of the sub-basins will differ.

In short, provisions should be may to understand return flow mechanics thoroughly on a basin by basin routine prior to allowing a permanent transfer of decreed rights. The study should also address the effects on return flows of sprinkle irrigation vs. flood irrigation.

Regards,

KD Feeback

# APPENDIX C

## RETURN FLOW FROM IRRIGATION STABILIZES WATER SOURCES

**Copyrighted by Eugene Manley & William Ohrmann**
**Drummond, Montana 59832**

There seems to be plenty of controversy between agriculture, and other users of water. Disputes over the de–watering of streams due to irrigation demand are common.

A drought shocks all of us when we see a stream almost dry, however, ranchers and fisherman really want to see the same thing, a stream full of water. Although it may seem hard to believe, water taken from a stream and used for flood irrigation, doesn't necessarily mean less water in the stream. It can actually work to stabilize the flow later in the season. A proven method is in place that tends to solve this serious problem of de–watering, but we must be willing to understand the complicated way in which irrigation water works its way through a basin. In some basins senior water rights holders sometimes forgo their claims for usage of their rights so that junior right users in the upper basin will make usage of that water in early spring. This will recharge the aquifer, start return flows, and insure those senior users of an in–stream flow that will satisfy their needs later in the season. This method of keeping stream flow constant is one that Mother Nature uses, and it is a natural by product of flood irrigation. This water that finds its way back into a stream after being used for flood irrigation is called "return flow".

One must realize that the source of all water in a basin system is Natural Flow water. As water is diverted for irrigation use, some return flows start to develop almost immediately, others develop over varying lengths of time. Over time, and with distance downstream, we find the source of irrigation water changes from natural flow waters to return flow waters. At the same time we find this return flow adding up to a greater volume of water than the creek would ever flow naturally, and that flow now furnishes most of the water in the creek. That return flow continues to flow long after the irrigation season is over.

When snow melts or rain falls, Mother Nature tries her best to put some of it underground in the aquifer. Flood irrigation does exactly the same thing and tends to store water just as surely and dependably as a dam. If it were not for this system of storing water in layers of sand, gravel, and bedrock, there would be no springs, rivers or wells. Some areas of the world that receive as much precipitation as we do, but lacking the underground storage we enjoy, are virtual deserts.

Nature in our area only gives about nine to fourteen inches of precipitation a year. It seems reasonable to keep as much of this spring run off in small dams or stored in the land itself, rather than have it rush away to the ocean without an opportunity to have it put to use. With the system of ditches and canals in place, we are able to add a great volume of water to the aquifers. It is not a new thing, it has been going on since the first ditch was dug. It has gone on for so long that it is taken for granted that springs, wells, wetlands and creeks have had, and always will have water. After well over one hundred years of flood irrigation developments creating much of the water for these uses, it is understandable how people would make those assumptions.

To illustrate the above points we only have to look at the Willow Creek In Granite County, where all water available for irrigation is measured into the system, and all water diversions out of the system are also measured. In 1988, the driest year ever in that basin, late in the irrigation season on a particular day there was a measured inflow of one thousand thirty five inches of available water, yet there was a measured diverted outflow of some four thousand one hundred inches of usage. One would certainly ask where that extra three thousand inches of water came from. Most of it came from return flows created by early season flood irrigation, some of it from direct return flow.

In the Flint Creek Basin also in Granite County in that same year some 10,000+ acre feet of water were discharged into the upper basin out of the East Fork Reservoir. This furnished some 60,000 acre feet of usage throughout that basin, once again the difference of some 50,000 acre feet can be accounted for by the use and re–use of return flows. As in most basins of this State, if one were to tour the basin in late winter before spring run off and again in late June, or early July, a close observation would astound one as to how many formerly dry, or virtually dry watercourses are now flowing water, and how much total water they are flowing, and the contributions they are making to the overall efficiency of the basin's usage of water.

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In Flint Creek in 1988, after June 25th, well over 65 percent of the water diverted was return flow. Therefore, it makes sense to find out where those return flows are, what creates them, what the amounts are in different reaches, and knowing all these factors realize how we can fit them into a better management plan for all of the available waters. This is one of the reasons we now have in place a four year study of those return flows in the Flint Creek Basin.

If irrigation methods are altered we will see many changes that will effect us all. Some we won't especially care for, such as a much worse chronic de-watering of streams, and water shortages.

In many areas of the United States, like the Southwest, water is being pumped from ancient underground sources and the water table is lowering ever year. Wells hundreds of feet deep are going ever deeper. We hear how concerned people are trying to figure out a way to divert rivers of the North to these areas, to recharge and stabilize this underground source. The suggested method to recharge these aquifers would be by flooding areas that have proper soils so as to allow this water to percolate to these underground lakes. Flood irrigation on a grand scale!

For many years sprinkler irrigation was recommended as a way to save water. At the time it seemed like a good idea. Use only what the crops actually need and let the rest go down the stream. However this salvaged water was soon being used on new land, was being totally consumed, and wasn't going down stream at all. This of course is what sprinkler irrigation is supposed to do. Since it makes such efficient use of the water it also causes springs to go dry, and also puts an end to return flows.

Supposing in the future all lands were under sprinkler irrigation. One might then ask how things would be. There would be no more underground storage, fewer springs, and just small areas of seepage. We would have very few wetlands, and also some dry household wells. The creeks that we think we see de-watered now would have reaches dry virtually all summer with no chance of recovery, because there would be no return flows for them.

Another very often suggested method of conserving water is the lining of canals and ditches so as to stop water losses that leave those conveyances by seepage. This is an immediate solution that could have dramatic consequences creating more problems than it solves. Among those consequences are the drying up of valuable wetlands, and the simultaneous shut off of strategic return flow patterns that help stabilize a basin system.

Return flow which starts out as water diverted from a stream, irrigates land, is caught again and again and used over and over. Much of it seeps into the aquifer and comes out eventually as springs. Instead of being long gone out of the valley it is stored underground. It too, eventually reaches the ocean, but the good it does an irrigated basin by being stored and released slowly should be recognized as the gift it is.

One hears about developers wanting to drain wetlands, but not many ranchers feel that way about them. Most wetlands on ranches are valued as pasture, and as a source of water that eventually drains back into a creek. One could ask how many of these wetlands would exist if there were no flood irrigation, and the answer would be very few compared to what we now have. We all know of the numerous areas of typical wetlands, consisting of cattail areas, sedges, and small streams that are dry in spring, but get wet as soon as the land above them is irrigated. It is no secret, it happens every spring to thousands of acres in irrigated valleys. Willows and other small trees develop in some of these areas and furnish excellent habitat for all kinds of birds and other forms of wildlife.

If wetlands are important, as we are told, then these people who believe this should wholeheartedly encourage flood irrigation. So should fishermen, sportsmen, hydropower companies, and anyone else interested in seeing stable late summer stream flow, dependable wells and green valleys.

**EUGENE MANLEY**
*Broker*

*15 Willow Tree Lane*
*Hall, Montana 59837*
*(406) 288-3409*

*Ranch Broker Consultant*

*Water Rights Consultant*

September 20, 1993

Patrick K. Goggins
Western Livestock Reporter
P. O. Box 30758
Billings, MT 59701

Dear Mr. Goggins

This letter will help to explain what I meant by the statement, "A large majority of the ranches I look at have major unrecognized problems in their water right claims," that was in Agri-news on September 17, 1993.

The State of Montana has for sometime been involved in a general adjudication process that should fully and adequately decree All of the water rights that existed prior to July 1, 1993.

In the Flint Creek Basin, where I live, very few if any claims reflect, or claimed those historical high water rights which they used over and above what was decreed in the original decrees issued in the basin. In my work in other basins I see the same dilemma. Those who failed to file on those high water rights not only jeopardize their own own historical beneficial usage rights, they have put in severe peril a whole basin aquifer storage system because the use of those high waters is what creates return flows sooner and sustains them longer.

In the lower reaches of a highly developed basin system these return flows, after high water run off, begin to make up most all the water used in the lower reaches of a basin. They can also become the sole source of water for the most senior water rights.

If we do not correct this problem now, before our final decrees are issued, we will discover our failure to claim this high water will tax the logistical capacity of a basin system beyond its delivery capabilities, creating irrigation deficits and further instream flow depletions that most probably can not be overcome for the rest of the irrigation season.

There are large amounts of wetlands, sub-irrigated grounds, and wildlife habitats that stand to loose their sources of supply because there was either no way to claim a right, or the flow rates granted will never reach their destination.

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Many times in the past at meetings I have made the following two statements:

> "In any legal process involving water in Montana, we should be claiming the largest amount of water with the earliest priority date that is legally defensible."
>
> "Make sure your water right claims reflect the maximum amount of water that was historically put to a beneficial use in the past."

We are failing to do either of the above effectively!!

Sincerely,

Eugene Manley

SENATE AGRICULTURE
EXHIBIT NO. 3
DATE 1-27-95
BILL NO. SB 144

TESTIMONY IN SUPPORT OF SENATE BILL 144
PRESENTED BY HOLLY FRANZ
ON BEHALF OF THE MONTANA POWER COMPANY
JANUARY 27, 1995

My name is Holly Franz. I am testifying on behalf of the Montana Power Company in support of Senate Bill 144. SB 144 is the result of almost four years of work by the Upper Clark Fork River basin steering committee. The steering committee is composed of local interests and users in the Upper Clark Fork River basin, including the Clark Fork River and all its tributaries above the Milltown Dam. I represented the Montana Power Co. on the steering committee. The Montana Power Co.'s interest in the Upper Clark Fork arise from its ownership of the Milltown and Thompson Falls dams and the associated water rights.

There are three basic provisions contained in SB 144. Sections 1 and 2 amend the existing basin closure in the Upper Clark Fork; Section 3 creates a permanent steering committee; and Sections 4 through 10 and 13 create a ten year instream flow pilot project. I will address Sections 1 and 2 of the bill dealing with basin closure.

When the various interests in the Upper Clark Fork began to meet in 1990, the first matter they agreed on was the basin was overappropriated. As a result, legislation was passed by the 1991 legislature closing the Upper Clark Fork River basin to new surface water permits. Originally, the only exceptions to the closure were domestic and Superfund uses and groundwater. The 1991 legislature directed the Upper Clark Fork River basin steering committee to make recommendations in the management plan on whether to continue, terminate or modify the closure.

The steering committee is suggesting a number of changes to the basin closure. First, the existing closure does not apply to the Blackfoot River or Rock Creek. These areas were originally excluded since they did not have any representatives on the group which proposed the original closure. After meeting with water users in these areas, it is now suggested that they also be included in the closure.

Second, the specific exemptions to the closure should be changed. The proposed exemptions include stockwater, storage projects, limited Superfund use, and power generation at existing hydroelectric dams, and domestic groundwater use. I will address each exemption individually. Stockwater is exempted for a number of reasons including the small consumptive nature of this use, the practicality that cows are going to drink from a stream if they can get to it, and a recognition that as pressure is brought to remove cattle from stream banks, ranchers need the opportunity to develop alternative water sources. Storage is exempt because it generally

seeks to appropriate water during high runoff, the only time of year when it is available. Power generation at existing hydroelectric dams is exempt to the extent that more power can be produced without consuming additional water.

The continuing exemption for Superfund was one of the more controversial exemptions. Some people supported continuing this exemption in light of the importance of cleaning up the Clark Fork and concern that if an exemption was not allowed, the federal government would try to preempt state water law. Others opposed it claiming that an unlimited Superfund exemption would allow ARCO and the EPA to apply for large amounts of water for dilution and other uses. Many thought ARCO should purchase existing water rights for its use. The steering committee compromised by allowing the Superfund exception continue for five more years at existing sites as long as water is not used for dilution.

The other major issue in the closure is groundwater. The original closure did not include groundwater. When the steering committee began to consider modifying the basin closure, it did not include groundwater. Many members of the local watershed committees, however, felt it was unfair to close surface water while allowing groundwater uses that may impact surface water. This concern is based on the fact that groundwater is hydrologically connected to surface water in the intermountain basins of the Clark Fork. The use of groundwater either intercepts water which would otherwise flow underground to the river or may draw water from the river itself. Someone could drill a well in 1994 and in low water periods continue to pump which a surface water user with a much earlier priority date is shut off. There is a concern that more groundwater will be used reducing the already overappropriated surface water. These concerns led the steering committee to include groundwater in the basin closure. The one exemption is groundwater may be used for domestic and domestic municipal uses. Until more is known about the impact of groundwater use on surface water, the steering committee decided to err on the side of protecting existing senior water uses.

There is one more important element of the basin closure. The steering committee and the watershed committees do not pretend to know what will happen in the future. To allow the basin to respond to changes and problems which may arise, the basin closure must be reviewed by the steering committee every five years. While the basin closure may be amended sooner than every five years, it must be reviewed at least that frequently. This will ensure that the closure continues to meet the needs of the basin.

I urge your strong support of Senate Bill 144. Thank you.

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Mr. Chairman and members of the Committee, my name is Land Lindbergh. I am a member of the Upper Clark Fork River Basin Steering Committee, and do my best to represent the priorities and opinions ... the concerns and anxieties ... of the people of the Big Blackfoot Valley; all the people of the Valley; who live and work and recreate within the largest watershed of the Upper Clark Fork drainage. I am a 30 year resident and property owner of the Blackfoot Valley, and managed my family's ranch at Greenough for most of that time. I have also worked very closely for many years with environmental and conservation groups, as well as state and federal agencies, in a continual effort to deal with the never-ending problems and issues and conflicts which seem to inevitably arise as a part of the uneasy relationship between landowners and recreationists, between ranchers and environmentalists, between private property rights and public use rights.

As you well know, the issue of In-Stream Flow has been an especially hot topic of discussion in recent years. It certainly was for this Steering Committee ... I believe that we delayed and procrastinated, discussed and debated, modified and revised more over this part of our recommendation than any other. We finally came to an a agreement on a proposal for a 10 year In-Stream Flow Pilot Program that 20 of the 21 members of the Steering Committee could support and do support ... some of us feel that it may go too far - too fast ... some of us feel that it probably does not go far enough ... but I believe that we all recognize a need to

have an opportunity to give this proposal a try ... to see what the real problems are (and there will definitely be some problems) ... to have the chance to review and modify, when and where necessary. I would like to say at this point that while it is understandably easy for many of us on the Steering Committee to support a trial In-Stream Flow program, those members from the agricultural community have had a real struggle to contend with ... there is a recognition that something is going to have to happen, but there is also a genuine desire to avoid opening up a whole new area of water rights litigation with in-stream flow legislation. The agricultural members of the Steering Committee are to be particularly commended for working long and hard on this proposal ... it was sometimes difficult for them to go home to family and friends and neighbors and have to justify the outcome. We have tried very hard to address the concerns voiced by members of the agricultural community (and there are many legitimate concerns) - and still respond in a productive manner to the expressed desires of those who feel that the present situation for In-Stream Flow is just not being adequately taken care of. We have done our best with a very controversial issue that is not going to go away ... that is going to be with us from here on out ... that has to be realistically and responsibly dealt with ... and we hope that you will give us the opportunity to try our proposal out in the real world ... to find out what we are actually going to be facing ... so that we can respond to what actually happens, and not just to our imagined fears and

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worst anxieties. It can be done ... hopefully you will give us the chance to move on with that effort.

At the present time, in-stream flows can be protected for the maintenance of fisheries by the use of one of three methods:

1. Murphy Rights - which are held by the DFWP, and within the Upper Clark Fork River Basin, are limited to portions of the Big Blackfoot River and Rock Creek.

2. Water Reservations - which have been granted in the Yellowstone Basin and in the upper Missouri River Basin above Fort Peck Dam; and have been applied for in the Upper Clark Fork Basin, but temporarily suspended pending the outcome of our Upper Clark Fork River Basin Study.

3. Water Leasing - which is restricted now to the DFWP and limited to 20 designated streams. At this time, the Department has entered into 3 in-stream flow leases: 2 on Mill Creek, a tributary of the Yellowstone River, and 1 on Blanchard Creek, a small stream in the Big Blackfoot drainage.

Our proposal would expand this last method, the Water Leasing program, to include the following recommendations:

1. The implementation of a 10 year in-stream flow pilot study to be limited to the Upper Clark Fork River Basin above the Mill Town Dam, and to include the Big Blackfoot and Rock Creek drainages. The purpose of the 10 year study would be to determine the implications of potential water rights purchases. As now proposed, the study would terminate on June 30, 2005.

2. The study will test allowing a public or private entity

to lease an existing water right for in-stream flows from a willing lessor, or allowing an existing right holder to convert an existing right to an in-stream use, and then to protect the lease or conversion against appropriation by junior users for the period of the study.

3. To obtain and protect a lease for in-stream flows, or to convert an existing right to an in-stream use in a specific stream reach, an entity would be required to proceed through the water rights change process and demonstrate that no other water right holder would be adversely affected by the lease or the conversion.

4. Leases or conversions that occur under this proposal would be subject to all principles found in Montana's prior appropriation doctrine, including objections from affected water right holders. A lease or conversion could not occur if it adversely affected the holder of another valid, existing water right ... such a situation as might occur with the interruption of return flows which could create problems for downstream users.

5. As originally proposed, prevailing objectors in all water-use change proceedings - not just those related to in-stream flows - would be reimbursed by the non-prevailing party for attorney fees and costs.

6. The local watershed committees would be encouraged to review all proposals to leave water in-stream in an attempt to resolve change conflicts before they reach the DNRC or the water courts.

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7. Each in-stream flow lease and conversion under this proposal would be evaluated after 5 years if a petition to do so is made to the DNRC by a water right holder claiming harm. The lease or conversion might then be reversed or modified.

8. All leases and conversions would be evaluated for adverse and beneficial effects, including possible tax consequences, by the basin-wide steering committee 10 years after the proposal is enacted by the Legislature. The results of this review would be reported to the Legislature, including a recommendation on whether the in-stream flow/transfer process should be continued and conversion of the leases to purchases should be allowed.

This summary review has touched on the more important points of our proposal for the 10 year In-Stream Flow Pilot Study. I am sure that you will have many questions, but my time is up and others wish to speak. Thank you for your consideration.

SENATE AGRICULTURE
EXHIBIT NO. 5
DATE 1-27-95
BILL NO. SB 144

A Resolution

Headwaters Resource, Conservation and Development Area, Inc., Butte, Mt.

Board of Directors

January 26, 1995, Board Meeting

re: An Act Amending the closure of the Upper Clark Fork River Basin to further appropriations...."

WHEREAS, the HRCD Ag Water Committee at its January 18, 1995 meeting took the following action:

Recommend to the Board of Director's that Headwaters RC&D support the proposed legislation SB 144 except that ground water use permits that can supplement surface water uses be excluded from basin closure; reference 85-2-336 BASIN CLOSURE - EXCEPTION. Add to subsection (2) a section (f) titled **"An application for a permit to appropriate water from a ground water aquifer that can supplement surface water uses or is within a controlled ground water district."**

Approved: James H. Davison, Chair

Date: 1/26/95

(1)

SENATE AGRICULTURE
EXHIBIT NO. 6
DATE 1-27-95
BILL NO. SB 144

Mr. Chairman, Members of the Committee, for your information, my name is Jo Brunner. I am a member of the Upper Clark Fork River Basin Steering Committee.

Also for your information, prior to the Committee becoming a segment of the State Water Plan, and the members then appointed by the Director of the Department of Natural Resources, a committee was in existence, made up of water related interests in the Upper Clark Fork Basin. At that time I was the Executive Director of the Montana Water Resources Association & MWRA members in the Basin requested my participation. I have since retired from MWRA and Eugene Manley now represents the Association on the Committee.

I have lived on and helped operate an irrigated farm all my life. This is my 9th session lobbying for agriculture interests, primarily water issues..

As an irrigator I care about the availability of water, of good clean water, of whether and when the streams run, if there is enough water for our needs, and because my family swims, boats, fishes and just plain enjoys the streams, rivers and lakes, I want there to be enough water for the fisheries, for sportsmen, for hydro production, for the municipalities ---- besides our livestock and lands.

I am [redacted]aware that agriculture has the rights to much of the water in Montana and when we are in a drought situation, we often dewater streams, fully or partially to grow the crops that provide your food. I beleive that is a necessity!

I also know that there have to be ways for us to conserve water-- to use better irrigation practices, and sometimes go without to keep a way of life we all love and want to survive--[redacted]

[redacted].

I believe

water. [redacted] many of agriculture may have tired of hearing me say, what the law giveth, the law taketh --- and of my great concern that we must educate ourselves to other water needs, --if we did not learn methods to conserve and to share our right to use the water. -- ---~~and~~ that we would -- through legislative changes ---- not to our liking ---~~loose~~ lose or have a lessening of our water rights.

Many of us in agriculture grew [redacted] tired of the demands for us to give our water --- what we perceived as a taking of private rights---, of compromising, with those who we feel, had nothing to compromise with but the threat of lawsuits, law changes and the media. We never were, but we still are not --certain that no matter what we did or conceded, that the next day would not bring more demands. We fought the same fight over and again. And so when the opportunity came to sit down and try to reason together with other water uses and needs it was indeed welcome. I hope you can see how well it has worked out. It has not all been a bed of roses, but we are here now, to show you that it can be done.

It seems logical that before one learns to swim, one must take a shot at wading. And if it seems apparent that you may be forced into deeper water it seems a good idea to try to find out a little about whats before you. The leasing bill was [redacted] learning to wade ---- and it has not turned out to be the boogey man many thought it would.

Agriculture must be prepared to swim and to be prepared, we have to understand the consequences : -----of taking the water off the land, --- to the tax base,--- to our communities --- and to other water right holders. We cannot just guess --- we have to know the consequences. We have to have the knowledge that comes only with on the ground examples ~~and~~ working through problems ~~and~~ accepting, realistically both the good and the bad.

A sub-committee of the CLARK Fork committee was formed to work out proposal for a pilot instream flow sale and lease of water that would allow the water right holder to voluntarily transfer his water right,----- or a portion, or to just leave his right in the stream, -- to maintain a level of water for the fisheries ---

(3)

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SB 144

and to any one who might want to purchase or lease it..The recommendation has protection for the water right holder against the loss or abandonment of the right should they decide not to proceed after the ~~pilot project~~ initial program, with protection for other right holders on the stream under consideration. The legislature, --- *you people*, ---- *must approve the continuation of the program.* [redacted] ~~transfers.~~

You will note that the reference to sale was removed, with my I objections because I believe we have to know the consequences of such a transfer. Enough safe guards are in our recommendations to protect any water right holder involved in or concerned about such a transfer.

I want you to know that I do not believe in the sale of water for instream flow protection. I believe that all water needs and uses can work together as we've done within this committee, --- to conserve ----to understand each others needs -- to share -- but------- but --- I want all of us, agriculture, fisheries, hydro, sportsmen, municipalities to understand the consequences, good or bad, so that if the sale of water is ever approved for instream flow in Montana, we will know what to expect.

I also have a great concern for the overmining of our underground storage, our aquifers. I do not want to stop progress: communities are all in various financial problems, people need homes to live in and industry needs to develop, farmers and ranchers may want more water for their lands, all good and viable needs for drilling wells.

. However, I ask you to consider strongly the language in this bill concerning ground water exemptions and not enlarge upon it. Before large development of ground water in the Upper Clark Fork Basin proceeds, we need to know where the Deer Lodge water supply comes from, where underground streams flow, where we can develop storage, and irrigations practices to ensure replenishment and protection of the underground water supplies.. Those studies need to be

Storage, both structural and underground, has not been a very popular concept of late. Nor until recently have return flows, ---stream replenishment --- been recognized. Those of us who have been in water use industries for many years understand the necessity of both issues. We must store early run off, for instance, not only for agriculture, but to maintain instream flows for a longer period of time. And we must divert water from the stream, to go into the soil, to be reused over and again, and eventually return to the source. If we never divert, the water runs down and out of the tributary into the ~~basin~~ mainstem, out of the ~~basin~~ Basin and it is gone. Both will benefit not only the Clark Fork Basin, but our complete water systems. And the experiences of the Upper Clarkk Fork River Basin Steering Committee will benefit other basins. It has been an experience that I wouldn't trade for the world, and I commend the Department of Natural Resources for ~~[illegible]~~ supporting our need to move our own speed, -----to set our own agenda---- to make a few mistakes and to correct them ourselves along the way ---- and for providing staff and research when needed. I am grateful for those of you who, when we came to you with a request to provide this committee in 1991, you agreed to do so.

I ask that you support these recommendations by the Upper Clark Fork Basin Steering Committee as they are given to you in SB 144.

SENATE AGRICULTURE
EXHIBIT NO. 7
DATE 1-27-95
BILL NO. SB 144

# TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON SENATE BILL 144

## BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

## JANUARY 27, 1995

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS; AMENDING THE DUTIES OF THE UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; PROVIDING FOR A 10-YEAR UPPER CLARK FORK RIVER BASIN INSTREAM FLOW PILOT PROGRAM; PROVIDING FOR THE AWARDING OF REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY IN WATER USE PERMIT AND CHANGE APPROVAL PROCEEDINGS; AMENDING SECTIONS 85-2-102, 85-2-125, 85-2-335, 85-2-336, 85-2-338, 85-2-402, 85-2-404, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

The Department of Natural Resources and Conservation strongly supports the watershed activities of the Upper Clark Fork River Basin Steering Committee. This support includes Senate Bill 144 the implementing legislation introduced by Senator's Vivian Brooke and Tom Beck.

Please remember the Upper Clark Fork River Basin Steering Committee was authorized by legislation passed in 1991. The Steering Committee was to develop a water management plan which

- identified and made recommendations regarding the resolution of water-related issues in the basins[1], and
- developed recommendations concerning the Upper Clark Fork River Basin Closure,

The official appointment of members to the Steering Committee was made by the Director of DNRC as directed by statute.

From DNRC's perspective Senate Bill 144 implements three principle accomplishments of the Upper Clark Fork River Basin Steering Committee.

- Senate Bill 144 resolves the immediate conflicts and issues related to new water right development and instream flows for fishery and water quality

[1] In 1991, the issue of predominate concern to many of the basin's water interests were the potentially conflicting applications to reserve water for storage or for instream fishery flows.

protection. The proposed closure responds to specific issues placed before the Steering Committee by the 1991 legislature. Although considered a permanent closure, an internal watershed specific review and assessment is called for every 5 years. This review was specifically requested by the local Watershed Committees. Through this review the community and the state can reevaluate changing conditions.

▸ This bill develops a pilot program, specific to this watershed, where willing parties "test" water right leasing to enhance instream flow. The ten (10) year test or pilot program provides 1) additional provisions to address possible third party impacts, 2) establishes additional evaluation of individual leases, and 3) requires an assessment of several potential community wide impacts such as the affect to local property tax. The program will discontinue unless the legislature takes specific action to extend it.

▸ Most importantly, the watershed stakeholders desire to continue to rely on consensus and their collaborative process to address future water resource issues. The bill recognizes the continued existence of the Upper Clark Fork Steering Committee and updates their duties reflecting the current status of basin water issues.

The Steering Committee has a new model for developing resource management plans and for resolving local conflicts. Their process is collaborative, consensus based, and involves a broad spectrum of local stakeholders.

Steering Committee members live or work in the basin. To further incorporate local interests, the Clark Fork process has relied upon the advice of six local watershed advisory committees. The Steering Committee has effectively incorporated government assistance into this partnership. In the Clark Fork, government is providing technical support to local water interests.

The Upper Clark Fork River Basin Steering Committee is a successful example of the partnerships Governor Racicot called for in his recent State of the State Address.

SENATE AGRICULTURE
EXHIBIT NO. 8
DATE 1-27-95
BILL NO. SB144

8/19/94
Glen Waterusers
Randy Smith
Box 3
Glen, MT 59732

The Honorable Marc Racicot
Govenor, State of Montana
Capitol Station
Helena, MT 59620

Governor:

We are concerned ranchers on the Big Hole River. We rely on irrigation from the Big Hole and its tributaries to maintain our living, our lifestyle and our tax base in southwest Montana.

Continued drought is placing hardship on the ag users and stress on the riparian qualities of this river valley. The legislative Water Policy Committee, the Lt. Governor and the river users have met to address this situation. Irrigators have cut their use to less than half their needs and the river keeps dropping. Closing the river to fishing is a possibility. This brings us great concern. Even though the river has dropped to flows as low as 70 CFS in the past, Dick Oswald of the Department of Fish, Wildlife and Parks feels 150 CFS is critical. We saw this river drop to this flow today.

It has become evident in order to meet the demands placed on the Big Hole, that long term practical solutions be found which are based on factual data. With this in mind we ask for your help by supplying technical assistance to a local working group to help define this problem and design a solution. We recognize there are a number of interests in our valley that will have to be included in this process and we intend to include all those interests that demonstrate they will responsibly participate in a process to achieve practical and reasonable remedies to this dilemma.

Sincerely,

Randy Smith
Maynard Smith
Bill Garrison
Frank Richards
Gunnar Kalsta
Jim Hagenbarth

SENATE AGRICULTURE
EXHIBIT NO. 9
DATE 1-27-95
BILL NO. SB 144

Senate Bill No. 144 TSB144P.S
January 27, 1995
Testimony presented by Dennis Workman
Montana Fish, Wildlife & Parks
before the Senate Agriculture Committee

Chairman Swysgood, members of the committee my name is Dennis Workman I reside at 5449 Prospect Drive, Missoula. I am the Regional Fisheries Manager for Fish, Wildlife & Parks in Missoula. I have been the departments' representative on the Upper Clark Fork Steering Committee since August, 1992. I appear before you today to testify in support of Senate Bill 144.

The Steering Committee with its six watershed committees establishes a network of people who are interested in the future of the upper Clark Fork Basin. These committees provide an excellent opportunity for us to get to know each other and, more importantly, to gain an understanding of the problems we each face in our particular areas of interest. It is through this understanding that we can begin to find local solutions to our problems. In our search for solutions we seem to find plenty of things to disagree about but because of the excellent forum for discussion established by the steering committee we are able to engage in frank, nonthreatening discussions of our problems and find solutions that are most acceptable to the community at large.

Senate Bill 144 represents countless hours of debate and compromise on the parts of many people. It also represents a beginning in the process of solving problems in water allocation and use in the upper Clark Fork Basin. I urge you to recommend passage of Senate Bill 144 as written.

Thank you for the opportunity to speak to you today.

SENATE AGRICULTURE
EXHIBIT NO. 10
DATE 1-27-95
BILL NO. SB 144

**TESTIMONY OF GARY INGMAN**
**BEFORE THE SENATE AGRICULTURE COMMITTEE**
**JANUARY 27, 1995**

Chairman Swysgood, Vice-chair Devlin and members of the Committee, my name is Gary Ingman and I speak today on behalf of the Montana Department of Health and Environmental Sciences and as the Department's representative on the Upper Clark Fork River Basin Steering Committee for the past three years.

The Montana Department of Health and Environmental Sciences supports Senate Bill 144 because it represents a common sense, consensus-based and fiscally responsible approach to resolving a long history of water use conflicts, chronic water shortages and water quality problems in the upper Clark Fork River Basin. This legislation will bring more than three years of committee work and public participation to fruition and will immediately create opportunities for grassroots-level, collaborative water problem-solving. Senate Bill 144 gives basin residents and local water users the tools to fix problems themselves. It decreases reliance on government agencies and it is largely voluntary in nature.

The Department is keenly aware of the importance of streamflow volume to the protection of water quality. Maintenance of adequate streamflows in the Clark Fork, which will be enhanced by passing this bill, is essential for diluting permitted municipal and industrial wastewater discharges to the Clark Fork. Minimum flows are also important for maintaining acceptable water temperatures and dissolved oxygen levels for cold water aquatic life, which is a designated use of the Clark Fork River under the Montana Water Quality Standards. Any further depletion of streamflows will result in increased wastewater treatment costs and will quickly eliminate improvements in water quality resulting from past and planned pollution control measures. Measures securing long-term protection for instream flows in the upper Clark Fork Basin, like those contained in Senate Bill 144, were recommended in a 1993 three-state water quality management plan for the entire Clark Fork-Pend Oreille Basin which was mandated by the U.S. Congress in the 1987 federal Clean Water Act. Thank you for the opportunity to endorse Senate Bill 144.

THE
Clark Fork
Pend Oreille
COALITION

SENATE AGRICULTURE
EXHIBIT NO. 11
DATE 1-27-95
BILL NO. SB 144

**TESTIMONY OF GEOFFREY SMITH**
**CLARK FORK-PEND OREILLE COALITION**
**BEFORE THE SENATE**
**AGRICULTURE, LIVESTOCK, AND IRRIGATION COMMITTEE**
**January 27, 1995**

Chairman Swysgood, Vice Chairman Devlin, members of the Committee, for the record my name is Geoffrey Smith, I live at 3041 Riverbend Road in Bonner, and I am testifying today on behalf of the Clark Fork-Pend Oreille Coalition. The Coalition is a citizens-based, water quality advocacy group dedicated to protecting and restoring water quality throughout the Clark Fork River basin. The Coalition has also been an active member of the Upper Clark Fork Steering Committee since its inception in 1991.

I am here to urge this Committee to support Senate Bill 144, the Upper Clark Fork Water Management Plan. This bill will empower local water users, not agency officials, to resolve the water use conflicts that result in over 471 miles of chronically dewatered streams in the Upper Clark Fork basin. More importantly, it can serve as a model for locally-driven, cooperatively-negotiated water conflict resolution in other watersheds across the state.

Consider what the basin's water users have done so far. In 1991, the Upper Clark Fork Steering Committee provided the first opportunity for competing water users to openly discuss their needs and concerns. For three years, the basin's ranchers, recreationists, industry, legislators, and regional water managers hammered out their differences in over 80 public meetings held throughout the watershed. In the end, they produced a cooperative, practical water management plan that has garnered broad-based support throughout the basin.

But right now the plan is only a plan. Unless this committee supports Senate Bill 144, the plan will not be implemented on the ground and the chronic dewatering problems that plague the Upper Clark Fork River basin

P.O. Box 7593
Missoula, MT 59807
406/542-0539

P.O. Box 4718
Butte, MT 59702
406/723-4061

will continue to occur. As you each decide whether or not you will support the plan, I urge you to consider the many benefits it will provide.

If approved, this bill will allow the Upper Clark Fork Steering Committee to continue: 1) to provide a forum for communication about water issues; 2) to educate water users about water law and related issues; and most importantly, 3) to facilitate the resolution of water related disputes. All of this will be done at the local level with direct communication and cooperation among competing water users, not with mandates handed down from the Department of Natural Resources and Conservation. The water use conflicts that grip our state every summer occur on the ground between individual water users. The Coalition believes this is where there disputes should be resolved as well.

In closing, I would like to say that no one on the committee is completely satisfied with every aspect the final plan. That probably means it's a pretty good plan. The point to realize is the overwhelming majority of the Steering Committee members believe it is a plan they can live and work with. The Clark Fork Coalition strongly encourages each member of this committee vote in favor of Senate Bill 144 as presented. Thank you for the opportunity to speak before you today.

DATE January 27, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 144

Executive Action on SB 166

< ■ > PLEASE PRINT < ■ >

Check One

| Name | Representing | Bill No. | Support | Oppose |
|---|---|---|---|---|
| Please Print !! | | | | |
| ↓ ↓ | | | | |
| OLE HELAND | HDWTRS RCD | 144 | X | |
| MIKE MURPHY | MT. WATER RES. ASSN. | 144 | X | |
| VANDA VTASH | ARCO | 144 | X | |
| Land Lindbergh | Big Blackfoot | 144 | X | |
| Jo Brunner | Upper Basin CFC. | 144 | X | |
| Bob Fox | EPA | 144 | X | |
| Holly Franz | MT Power Co | 144 | X | |
| Jim Dinsmore | Granite Cons. Dist | 144 | X | |
| JIM QUIGLEY | LITTLE BLACKFOOT RIVER | 144 | X | |
| Lee Jacobson | upper Clark Fork | 144 | | X |
| Dennis Workman | Fish Wildlife & Parks | 144 | X | |
| Gary Ingman | MT. Dept of Health | 144 | X | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE January 27, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 144

(If time) Executive Action on SB 166

< ■ > PLEASE PRINT < ■ >

| Name | Representing | Bill No. | Check One: Support | Oppose |
|---|---|---|---|---|
| Ron Kelley | irrigator | 144 | | X |
| DONALD R BECK | MYSELF - RANCHER & IRRIGATOR | 144 | | X |
| D. Henry Elsen | EPA | 144 | X | |
| Maureen Cleary-Schneider | Women In Farm Eco. | 144 | X | |
| Dan Tanner | Irrigator | 144 | | X |
| Ethan Barnett | BLDC | 144 | X AMEND | |
| Larry Brown | Ag. Pres. Assoc. | 144 | | X |
| Steve Fry | Washington Water Power | 144 | X | |
| MARK Simonich | DNRC | SB 144 | X | |
| Rody Holman | Butte Silver Bow | SB 144 | X AMEND | |
| Stan Bradshaw | T.U. | SB 144 | ✓ | |
| Eugene Manley | Flint Creek Basin | SB 144 | ✓ | |
| | | | | |
| | | | | |

**SEN. BECK** said if they decontrol or stop the milk from going out-of-state and coming back in, there is nothing in SB 364 that says the schools would be getting the milk at a lower price and they could go up to the same rate as the stores. Then they might have made it worse.

**SEN. DEVLIN** replied the committee agrees on most of the things they want to put a stop to. They drew up amendments, and if anyone else wants to suggest amendments, that is what the committee wanted.

**SEN. SWYSGOOD** replied they have to be careful about drafting amendments because of the loophole. They cannot regulate interstate commerce. That is the problem they have when trying to get that industry to say they would not do it anymore, that putting something in law saying they would not do it, because they cannot regulate interstate commerce. It would have to be something they would agree to in front of the committee. The committee would realize a reduced rate to the consumer in the process and if it did not happen, the next session the entire thing would be gone, including the producers.

**SEN. JABS** said the reason they did not take (b), (c), and (d) out of section 7 was because the wholesalers and the producers did not want to take them out. They were trying to protect the producers also.

**SEN. PIPINICH** said they left (a) in there, (b) and (c) are the wholesaler and the jobber price. If those can be driven down it would take the price of milk down.

**SEN. JABS** replied he realized that, but the producers said they did not want to take that out.

**SEN. PIPINICH** asked if the producers said that.

**SEN. JABS** replied that was correct. They do not want to do that at the present time.

**SEN. DEVLIN** replied they had a few days to draft some amendments to SB 364 and they would hear the bill on Wednesday.

## EXECUTIVE ACTION ON SB 144

Discussion:

**SEN. DEVLIN** asked **SEN. HOLDEN** to explain to the committee what the subcommittee had done on SB 144.

**SEN. HOLDEN** said there were three parts of contention in SB 144; the ground water, how much water ARCO should be allowed for their clean-up efforts, and whether or not they should maintain the steering committee or change the committee make-up that is designed in the bill. The subcommittee talked extensively about

the ground water issue. He said it would be appropriate for **SEN. BECK** to make a motion on the ground water and briefly explain to the committee what he would like to see the ground water issued in SB 144 since it is his basin that is being affected.

**Holly Franz** said that on page 2, line 4, section (2), presently says "an application for permit to appropriate ground water for domestic use". If they wanted it to be appropriated for any use. they could strike "for domestic use".

**SEN. BECK** replied that was correct.

**Motion**:

**SEN. BECK MOVED** the amendment "an application for a permit to appropriate ground water."

**Discussion**:

**SEN. DEVLIN** asked if they were crossing out "for domestic use".

**SEN. BECK** replied "for domestic use" was on line 4. He said there was a reference to 35 gallons per minute.

**Holly Franz** replied there was not an actual reference to that in SB 144, because they were exempt from the permit process. She said they may want to get rid of the definition of "domestic use" on page 18, line 1.

**SEN. BECK** replied they did not need the definition of "domestic use" on line 18, page 1. The title may have to be checked also.

**SEN. DEVLIN** asked if the amendment would be taking out all mention of "domestic use" throughout the bill.

**SEN. JERGESON** said by striking "for domestic use" subsection (2), says "the provisions of subsection (1) do not apply to an application or permit to appropriate ground water." That is all they need to say to not apply the closure in the basin to ground water.

**SEN. BECK** replied he did not see anything in the title that states ground water. He wanted to make sure the surface water was still under closure and it is.

**Doug Sternberg** replied he wanted to check the taking of "domestic use" out of those sections. He would want to make sure the phrase was not used somewhere else.

**SEN. BECK** replied that if it was used in another section they would want it taken out of that section also.

**SEN PIPINICH** asked where they came up with the 35 gallons per minute.

**SEN. BECK** replied a person does not need a permit to drill a well for less than 35 gallons per minute. He stated he did not want to get rid of the permit. If a person was drilling a well for over 35 gallons per minute they still have to get a permit.

**SEN. DEVLIN** replied they were on the amendment to take out the words "domestic use" on page 2, line 4 and they would follow that up throughout the bill.

**Doug Sternberg** said he did not see any other section where the reference was made toward "domestic use". He said they could also strike the definition on page 1, line 18 through 21.

**SEN. BECK** replied it was the definition of "domestic use" in SB 144.

**Doug Sternberg** replied they would take out the definition on page 1, line 18. On page 4 they would take out "for domestic use".

**SEN. DEVLIN** asked if that took care of the amendment.

**SEN. JERGESON** replied he did not approve of the amendment, but he would not resist the amendment because it would jeopardize the passage of SB 144. He said they did not know much about ground water. If in the future the drilling of more wells and the use of ground water is proven to adversely affect the surface water, how do they go back and fix that. A moratorium on ground water would be appropriate because they would continue the studies to see if there was a connection between the two.

**Vote**:

The **MOTION CARRIED UNANIMOUSLY.**

## EXECUTIVE ACTION ON AMENDMENT CONCERNING THE ARCO EXEMPTION

**Motion**:

**SEN. BECK** replied ARCO said they might need as much as 10 more cubic feet of water for their purposes. He said he was not getting rid of the exemption. **SEN. BECK MOVED** to put an amendment in that would put a parameter on ARCO that they could not exceed 10 cubic feet per second.

**Discussion**:

**SEN. PIPINICH** asked if that was in SB 144.

**SEN. BECK** replied they were exempt from surface water for Super Fund activities. He was trying to put a cap on how much water they were going to get. The reason for SB 144 was that there was a strain on surface water. It would be on page 2, line 8.

**SEN. DEVLIN** asked what that would limit them to.

**SEN. BECK** replied it would limit Arco to 10 cubic feet per second.

**SEN. HOLDEN** asked if that would be enough water to clean up the pollution problem. He said that **SEN. BECK** told him he was told by ARCO that was what they needed.

**Doug Sternberg** replied the amendment would be on page. 2, line 8, following the added "1994" a new sentence would be added saying "The total flow rates for all permits issued under subsection (2) (b) may not exceed 10 cubic feet per second."

Vote:

The **MOTION CARRIED UNANIMOUSLY.**

Discussion:

**SEN. HOLDEN** stated that dealing with the steering committee make-up, they have to decide if they want to keep the steering committee and if they do, make the steering committee make-up appropriate to handle two duties.

**SEN. JERGESON** replied they ought to keep the steering committee and they could not create a closure and then walk away. There should be a steering committee in place to review the closure.

**SEN. DEVLIN** asked what the make-up of the steering committee was.

**SEN.BECK** replied the make-up of the steering committee was on page 3 of SB 144.

**SEN. DEVLIN** asked the committee if they were satisfied with the membership of the committee.

**SEN. BECK** replied there was the argument that the steering committee was overloaded against agriculture. There were not very many actual people from the grassroots of the basin and some did not approve of the Northern Lights moderating the committee, but Northern Lights did an excellent job. Line 26 under the steering committee it says "make recommendations to the 1997 legislature concerning representation, terms, and the method of appointing members to the steering committee".

**SEN. PIPINICH** asked if they wanted more people from agriculture on the steering committee.

**SEN. BECK** replied there were agriculture organizations, conservation districts, departments in state government, environmental organizations, industries, local governments, reservation applicants, and utilities. There are also water user organizations and that is part of agriculture. He said he would

be willing to leave the committee as it is and in 1997 let the steering committee give their recommendation if it needed some improvements.

**SENATOR DON HARGROVE** said it read "The director should appoint the members". They are guidelines and the director could do whatever he wants. Is that the point they should address?

**SEN. BECK** replied he did not know who should actually make the appointments.

**SEN. HARGROVE** asked if it would be a good idea to take the "but is not limited to" out of the bill? Then they would leave the steering committee membership they way it was and they would know who would be on the committee.

**SEN. BECK** said they could leave it somewhat the way it is, but there ought to be a limit to the number of people on the committee.

**SEN. DEVLIN** said maybe it would be better to say "one person from each of the following". That would help on the size of the committee.

**SEN. BECK** replied the way it was structured was it had agriculture organizations and water user organizations. If they only had one member each, the committee would be unbalanced. He did not feel as if the steering committee was too unbalanced before. He would recommend the same steering committee come back with recommendations during the next legislature. He said they came from a number of sides on the committee.

**SEN. PIPINICH** replied there were 22 members.

**SEN. DEVLIN** asked if they thought the total steering committee ought to be cut back in numbers.

**SEN. HOLDEN** replied there were nine areas. Twenty one would be too many and nine would not be enough.

**SEN. BECK** said he they would have to weigh the organizations. He did not have that information to make that decision.

**SEN. JERGESON** replied that on that the current steering committee was appointed by the Director of Natural Resources and Conservation and they tried to balance that to their ability. They have to leave it to the current director of DNRC. They probably do not want it to grow beyond their ability to be able to have a meeting and have enough people there to participate. To try and limit it beyond the judgement of the director would be a mistake. They should leave it the way it is.

**SEN. PIPINICH** said the people were qualified who were members of the steering committee and they have done a good job.

**SEN. DEVLIN** asked if there were any other amendments.

**SEN. JERGESON** replied there was a technical amendment on page 21, line 5. It inserts "permits and water reservations" following "rights."

## EXECUTIVE ACTION ON AN AMENDMENT TO SB 144

**Motion/Vote:**

**SEN. JERGESON MOVED** the technical amendment. The **MOTION CARRIED UNANIMOUSLY.**

**Discussion:**

**SEN. DEVLIN** asked if the committee would like to hear from some of the interested groups in the audience.

**SEN. HOLDEN** said yes, if there was anyone who wanted to speak for 1 to 2 minutes per person and move on.

**SEN. DEVLIN** said those people with a few words to say could speak for a few minutes.

**Jim Dinsmore, a steering committee member from the Flint Creek Valley,** stated that they were concerned with ground water. No one on the steering committee had any intent of saying they should not develop ground water if it was available. He said he was very concerned if ground water was left open, what would become of his property right and his water right. It was in a small creek. If someone drilled a well above him that would diminish his water supply. If it was an individual, or another irrigator, he felt confident that he could proceed within state laws to defend himself. If it was a 500-house subdivision or a big cooperation state laws would not really come into play. It was still a property right he had to defend. Leaving ground water open would be putting a burden on the small users.

**Jo Brunner, a member of the steering committee,** stated that over the years the committee worked on the issue, they were mandated by the legislature to come up with certain specifics. The first thing was to consider all benefits and balance all uses of the Upper Clark Fork River Basin. The committee was balanced. There were nine that represented agriculture. She said the legislation requests continuing for 2 years in order to get the program into local hands. After that the legislature would make the determination of who would make up the committee. She said it was important to keep the committee. It was not a one-time minute response and request for the closure of ground water. At everyone of the meetings, there was at least one and sometimes several requests, to close ground water. The main reason was to protect the existing rights. There is a correlation between

ground water and surface water and there is a correlation between deep water. There was a great concern of the agricultural community that those deep aquifers had to be protected. She requested if they were going to eliminate any protection of the existing agriculture rights or other rights, that they put into it some type of a vehicle that would allow for the study of ground water. They need to know where the water comes from.

**Terry Lindsey, representing the Montana Water Well Drillers Association,** said they needed the scientific studies and they are going on through Montana Technology in Butte. They have laws to protect existing water rights and users.

**SEN. DEVLIN** asked if they were going to drill water for a large subdivision, would they not be surpassing 35 gallons and would they not have to get a permit from the DNRC.

**Jim Dinsmore** restated the exemption for domestic use and whether it was in a single household or for a multiple purpose well or a multiple user well.

**SEN. DEVLIN** said he thought they would have to get a special permit for 35 gallons or more.

**Jim Dinsmore** replied they did.

**SEN. DEVLIN** replied that would surpass the argument on a large subdivision coming in.

**Jim Dinsmore** replied it could still have some argument dealing with single house wells. He said his comments were coming from the area he resides in.

***{Tape: 1; Side: B}***

**SEN. DEVLIN** said they would take executive action on SB 144.

## EXECUTIVE ACTION ON SB 144

Motion/Vote:

**SEN. PIPINICH MOVED TO PASS** SB 144 **AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY.**

The **EXHIBITS #1 AND #2** were handed out before the committee meeting, but those parties did not testify in front of the committee.

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL DATE 1-13-95

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| GERRY DEVLIN, VICE CHAIRMAN | X | | |
| TOM BECK | X | | |
| DON HARGROVE | X | | |
| RIC HOLDEN | X | | |
| REINY JABS | X | | |
| GREG JERGESON | X | | |
| LINDA NELSON | X | | |
| BOB PIPINICH | X | | |
| CHUCK SWYSGOOD, CHAIRMAN | X | | |
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# SENATE STANDING COMMITTEE REPORT


February 13, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 144 (first reading copy -- white), respectfully report that SB 144 be amended as follows and as so amended do pass.

Signed: Chuck Swysgood
Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 1, lines 18 through 22.
Strike: ""Domestic"" on line 18 through "(3)" on line 22

2. Page 2, line 4.
Strike: "for domestic use"

3. Page 2, line 8.
Following: "1994."
Insert: "The total flow rates for all pelrmits issued under this subsection (2)(b) may not exceed 10 cubic feet per second."

4. Page 21, line 5.
Following: "rights"
Insert: ", permits, and water reservations"

-END-

Amd. Coord.

SB 144

**EUGENE MANLEY**
*Broker*

*15 Willow Tree Lane*
*Hall, Montana 59837*
*(406) 288-3409*

*Ranch Broker Consultant*

*Water Rights Consultant*

January 29,1995

SENATE AGRICULTURE
EXHIBIT NO. 1
DATE 2-13-95
BILL NO. SB 144

Chairman Swysgood, Chairman
Senate Agriculture Committee
Capitol Station
Helena, Montana

Dear Chairman Swysgood;

As a member of the upper Clark Fork Steering Committee I feel I must answer some of the criticisms I heard during last Friday's hearings on Senate Bill No. 144.

I missed only three of the seventy five meetings outside of my basin and can only wonder where were those who spoke as opponents of the plan when these meetings took place. I think the committee went the extra mile through ads and news releases to get more of the public involved. One of the reasons we set up watershed committees was to get more grassroots input and much of the plan reflects that public involvement.

In regard to the comment to the effect that storage is not adequately represented on the committee, I would have some disagreement with that. My irrigated lands are almost totally dependent on waters from the two storage facilities used in our basin.

For fifty five years I have been actively involved in the East Fork storage as a contract holder and as Executive Secretary of the Allendale Irrigation Company. That time period covers the entire history of that storage project. I spent many days and hours in those years helping make that a more efficient system.

Even though I own no water in the Willow Creek Dam, my water right on Willow Creek is totally dependent on return flows from that facility after early June of each year.

On June 10, 1992 I conducted a tour of the Upper Clark Fork Steering Committee through the entire Flint Creek Basin and two of the topics highlighted were our storage facilities on Willow Creek and the East Fork of Rock Creek. I also stressed the role return flows from these facilities play throughout the basin.

I would most urgently plead with you too keep the Upper Clark Fork Steering Committee as it presently exists. Let us, as a committee, make recommendations to the 1997 legislature as to representation, terms, and methods of appointment, as Senate Bill 144 calls for. The past meetings and those meetings for the next two years should give the committee special insights, through what they have observed and will observe, as to how the Upper Clark Fork Steering Committee should be structured after 1997.

We now have a committee of twenty very dedicated people, and I consider it an honor to have been associated with them in this endeavor to draw up the Upper Clark Fork River Basin Water Management Plan. As someone with many years of water management experience, I realize much remains to be done, and the continuity of the present committee is a very necessary element for the progress we hope to make in the next two years.

Sincerely

Eugene Manley

Eugene Manley
Member Upper Clark Fork Steering Committee

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 2-13-95
BILL NO. SB 144

# TESTIMONY

## SENATE BILL 144

GOOD AFTERNOON. MY NAME IS JIM QUIGLEY, RANCHER AND IRRIGATOR, REPRESENTING THE LITTLE BLACKFOOT RIVER ON THE CLARK FORK STEERING COMMITTEE.

I WOULD LIKE TO SAY I HAVE ENJOYED WORKING WITH THE OTHER STEERING COMMITTEE MEMBERS AND BEING A PART OF THE STEERING COMMITTEE, ITSELF.

THE CLARK FORK WATER MANAGEMENT PLAN MAY NOT BE PERFECT IN EVERY WAY, DUE TO THE COMPLEX AND IMPORTANCE OF WATER ISSUES AND THE TIME-FRAME IN WHICH THE COMMITTEE HAD TO WORK.

I FEEL THIS STEERING COMMITTEE AND CLARK FORK RIVER MANAGEMENT PLAN, IF ALLOWED TO CONTINUE, IS A MAJOR START ON WORKING WITH ALL ENTITIES THAT ARE SO DEPENDENT ON ONE OF OUR MOST LIMITED AND VALUED RESOURCE.

THIS COMMITTEE AND THE WATER MANAGEMENT PLAN HAS THE START IN ADDRESSING THE WANTS OF TODAY. THE BIG JOB IT WILL HAVE IS ADDRESSING THE NEEDS OF TOMORROW.

## HEARING ON SB 144

Opening Statement by Sponsor:

**SEN. VIVIAN BROOKE, SD 33,** stated there were a number of people were involved in bringing this bill to the committee. She stated they had been meeting as the Upper Clark Fork Steering Committee for over three years to develop a management plan for the Upper Clark Fork River basin. She stated this committee was directed to submit a report to the 53rd Legislature. **SEN. BROOKE** referred to the Water Management Plan for the Upper Clark Fork River Basin. (She indicated all agriculture committee members had received a copy of this plan.) This plan contributed to the drafting of SB 144.

**SEN. BROOKE** passed around the latest newsletter commenting on the issues of the Upper Clark Fork Steering Committee. In addition, she passed around a the Clark Fork Comments Blue Book. This book contained many written remarks individuals submitted during the process.

Proponents' Testimony:

**Jim Dinsmore, Granite County Conservation District and member of the Upper Clark Fork Steering Committee,** stated the purpose of the Upper Clark Fork Steering Committee was not to solve all of the problems in the basin, but to help steer the decision-making process. It brought people together who had a stake in water management within the basin. **Mr. Dinsmore** believed the make-up of the committee was fair and effective. He felt the future committee structure needed to be addressed as time goes on.

**Mr. Dinsmore** said the general background of the committee members should be agricultural. He said, "Agriculture is the major user of water and must take a lead role on the committee."

**Holly Franz, attorney on behalf of the Montana Power Company,** handed in written testimony. **EXHIBIT 1** **Ms. Franz** also presented an amendment to the committee and said this amendment would require the committee to take a look at this relationship between surface water and ground water. **EXHIBIT 2** She said with the amendment, they would support SB 144.

**Jim Quigley, rancher and member of the Clark Fork Steering Committee representing the Little Blackfoot Basin,** said the committee spent a lot of time trying to solve the water problems within the basin. Many individuals' hard work and dedication went into the creation and development of the Water Management Plan for the Upper Clark Fork River Basin. He said the committee was formed by the Governor to maintain water management plans. **Mr. Quigley** said in the future the need will surpass "today's wants." He said he would like to see many original members of the committee stay on and help solve other problems.

He said section 5 was added because of a personal experience and many other individuals' experiences. He said attorney fees had cost him $26,000 because of the adjudication process. In January of 1994 he had four court cases. All of his rights have been decreed and all have been through the Supreme Court of Montana. He said he went back to court and was tried again for the incidents in the past.

**Bruce Farling, Montana Trout Unlimited,** urged the committee to pass SB 144 with the amendments. He said this steering committee is a good example of how to continue to resolve potential resource disputes in the state. He said people sitting down throughout rural communities, discussing their differences, coming to some consensus, and then going to their lawmakers to affect legislative change, can make it happen "on the ground." He said people in the Bitterroot and the Big Hole are looking at trying the same kind of process.

In Section 3, the composition of the committee would involve the Director of Department of Natural Resources with the current mix and number with the ongoing steering committee and in two years the steering committee will come to the Legislature and make recommendations concerning the long-term recommendations pertaining to the members of the Clark Fork Basin Steering Committee. The mix at the present time is 8 or 9 members from the agriculture community, two members are from the municipalities (Anaconda, Deer Lodge and Missoula), two members are from industry/utilities (Montana Power Company and ARCO), and two members are representing a conservation group and four agencies to provide background information.

**Eugene Manley, Flint Creek Basin and member of the Upper Clark Fork Steering Committee,** said they decided early in the process, in order to get more input they would have to go to watershed committees. He said this was explained on page 33 of the Water Management Plan. In addition, he told the committee on page 3, the reference to watershed committees was found in this section of the bill. He stated they set up six different water shed committees. He wanted the committee to understand there was very little attendance from the public representing the lower Clark Fork. However, he stressed to the committee there was good representation by agricultural people who serve on the Clark Fork Steering Committee.

**Larry Brown, Agricultural Preservation Association,** echoed the previous comments by **Mr. Farling** and **Mr. Manley. Mr. Brown** explained that the watershed work groups that are coming forward and stated the agencies were part of the workgroups by invitation in an advisory capacity only. In local governments in reservation applications (on line 8 and 9) in regard to industries adding the words "mining and timber and or other industries," he felt this would help clarify that part of the bill. He said section 5, page 8 applies to all areas of the state and he felt it should only apply to the Clark Fork Basin.

**Mr. Brown** said section 6 dealt with the Upper Clark Fork River Basin Instream Flow Pilot Project and the word in this section was inconsistent with **REP. KNOX'S** instream flow bill for the state which was HB 472. He suggested that an opportunity may exist to provide consistent wording.

**Steve Fry, Washington Water and Power,** stated part of his duties with the Washington Water and Power is a lightnings administrator and working with the Noxon Rapids Hydroelectric project. He said they were water rights holders of over 50,000 CFS water on the Clark Fork River and they have been concerned about the water availability on the Clark Fork River. He stated their concerns were similar to the concerns of Montana Power Company.

At Noxon, in a normal year, there are approximately 22 days to fulfill their right, usually in late May or early June when there is enough water to fulfill the water right. He felt with the work of the steering committee that they were able to develop a good comprehensive water management plan. He said the approach used by the steering committee to get the people involved along the Clark Fork River Basin was good. "It's not in the best interest of anybody to have an entity outside of the basin such as a federal entity to come in and dictate what should go on within the basin."

**Mr. Fry** explained to the committee the educational impact dealing with the public through the 80+ public meetings held. The three and one-half year process was long and a lot of work went into establishing this plan. He stated SB 144 helped further the process. They recommended adoption of the plan (this is found on page 4 of the bill) and also the existence of the steering committee.

**Jo Brunner, member of the Upper Clark Fork Basin Steering Committee,** stated through the 3½ year process the members needed to educate each other on the wants and needs of water. She said this was not only in the Clark Fork Basin, but throughout the state of Montana. She said section 6, which was the Upper Clark Fork River Basin Instream Flow Pilot Project, was the direct result of sitting down with Fish, Wildlife and Parks and Trout Unlimited and several other organizations to work out an instream flow pilot project. What they kept in mind when they developed this section was whether this would be accepted by the legislature and the state of Montana.

She stated initially the instream flow pilot project included the sale of water, and she supported this because agriculture needs to take care of their own interests. She said, "If the day comes and this body decides there will be the sale of water, agriculture better know what they're getting into." She explained that a leasing water contract would be written between two parties and many things can only be addressed in a contract that could not be addressed by legislation. She said they tried very carefully to not intertwine the two.

**Ms. Brunner** said the existing right was protected under existing law. She said one would have to go through a change process as the law would require at the present time if someone should enter into a contract. She said if the contract was stopped for any reason one would not have to go back through the change process in order for it to go back to the original owner.

**Ms. Brunner** addressed ground water. She said she's very concerned about the ground water in the state of Montana and at first they had addressed ground water in the bill. She asked the committee to include an amendment that would allow the committee to study what happens when the aquifers are "mined." She then addressed the language **Mr. Brown** wanted the committee to change concerning the language of **REP. KNOX'S** bill and the state program instream flow. She said, "It's our understanding that specific language such as we have in our pilot program overrides the general language and so you don't have any need to change that." She said they felt it was better for a local steering committee to make decisions on what happens within the basin rather than having the government make those decisions.

**Mike Murphy, Montana Water Resource Association,** stated although they have not taken a position regarding section 5, in the end, the loser pays the provision. He said they discussed it and had some concerns. He urged the committee to support SB 144.

**Ole Ueland, Headwaters RC &D Area, Inc.,** handed in written testimony. **EXHIBIT 3**

**Mark Simonich, Department of Natural Resources and Conservation,** stated they had been very actively involved in the Upper Clark Fork Basin for the last 3½ years and they were very committed to the activities of the committee. **Mr. Simonich** echoed what previous proponents had stated. He handed in written testimony. **EXHIBIT 4**

**Stan Bradshaw, Trout Unlimited,** urged the committee to support SB 144.

**Gary Ingman, Montana Department of Health and Environmental Sciences** submitted written testimony as a proponent to SB 144. **EXHIBIT 5**

Opponents' Testimony: None

Questions From Committee Members and Responses:

**REP. CLIFF TREXLER** asked **SEN. BROOKE** where several areas were lined out on page 3, why this section is being omitted. **SEN. BROOKE** said the language deleted were the instructions from the steering committee. She said this language guides the process to bring about a management plan to be completed and presented to the 55th Legislature and was specific about what their task

should be during the years 1991 through 1995. She said the new language was what the committee wanted.

**REP. TREXLER** asked **SEN. BROOKE** about the amendments and language inserted to benefit the fishery resource seven times and wondered if it was "now slightly overweighed." **SEN. BROOKE** said no. She said what happened when the bill was being reviewed in the Senate, **SEN. GROSFIELD** sought to amend to mirror the consensus bill of **REP. KNOX's** HB 472. She said HB 472 addressed instream flow statewide.

*{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}*

**REP. DON LARSON** asked **SEN. BROOKE** to explain to the committee why the Senate elected to take out the domestic use provision in the front page of the bill. **SEN. BROOKE** replied the Senate took out the ground water provisions. She said there was a lot of controversy in committee about closure for ground water and that was where the domestic exemption came in.

**REP. LARSON** stated the concern among the communities around Deer Lodge where they would not be able to expand their water systems as a result of this closure to ground water provisions in the bill. Are fears be taken care of? **SEN. BROOKE** said there were no longer ground water restrictions within the bill.

**REP. LARSON** asked **SEN. BROOKE** is one could drill a well. **SEN. BROOKE** said they could with the proper permit.

**REP. ROBERT STORY** asked **Mark Simonich** about the closure of the Upper Clark Fork and the section that allowed for permits to be obtained to do environmental clean-up. He said he read there was a limit for flow and why there was no volume mentioned. **Mr. Simonich** stated he did not have the information and the bill was the direct result of what came out of the steering committee.

**REP. STORY** asked **SEN. BROOKE** to answer the question. **SEN. BROOKE** stated there was a lot of concern about that exemption. She said during the Senate, it was agreed to tighten that section. She said the industry seemed to be agreeable to the language. She said the basin should be closed and that was the agreement and then they started to carve out exceptions. She said people got real concerned that they were carving out too many exemptions out and there wouldn't be any closure, so a lot of people agreed that was a good amendment.

**REP. STORY** asked **Mr. Dinsmore** about section 4 that allowed for the recovery of legal fees. He asked if the intent was to be a statewide application. **Mr. Dinsmore** stated that it was his belief that they went through the process that they were dealing with part closure of the basin and not statewide.

**REP. STORY** asked **Jo Brunner** that she did not have this instream flow leasing bill sitting out there and did the attorney fee

issue merely address the costs of consumptive use to an instream flow use. He asked would the people recover the costs for those processes? **Ms. Brunner** asked **REP. STORY** if he wanted to know if it would be covered within the basin or a statewide program. **REP. STORY** asked **Ms. Brunner** to explain why that section was in there. **Ms. Brunner** replied that every meeting she attended, there was not a time someone had not requested they do something about the recovery of fees. She said the way it was written it would affect people statewide on the recovery of attorney fees.

**REP. STORY** asked **Bruce Farling** if he was heavily involved in **REP. KNOX'S** instream flow bill and if he thought coordination language could be drafted into this bill and **REP. KNOX'S** bill. **Mr. Farling** stated there was not a huge difference between the two bills. He said some language in **REP. KNOX'S** bill was not present in SB 144, such as the requirement that the owner of a water right make a call on water rather than the person making the lease. He said if the committee wanted to coordinate the language, he would not have a problem with it.

**REP. STORY** asked **Mr. Farling** why the benefit of a fishery was in the bill. **Mr. Farling** stated he could not speak for **SEN. GROSFIELD**. **Mr. Farling** said **SEN. GROSFIELD** was worried about the possibility of leasing occurring so water could be added to a stream so people could float on it. He said this would work for very small tributaries for a limited number of weeks out of the year for specific fishery benefits. He said by possibly taking care of fish, they may be taking care of human health concerns as well.

**REP. LILA TAYLOR** asked **Mark Simonich** how the steering committee members' names were submitted and how they were selected to serve. **Mr. Simonich** stated his predecessor selected them. He described that the Department of Fish, Wildlife and Parks applied for a water reservation to be used for a future use of instream flow in the Upper Clark Fork. He said the approach the steering committee took was similar to their existing state water planning process. He said DNRC is directed under state law to develop a state water plan. He added the steering committee was directed to follow the state water planning process and they did follow the same committee structure.

**REP. TAYLOR** asked **Jim Dinsmore** if the future committee would need to be addressed and if he meant the make-up of the committee or who would serve on the committee. **Mr. Dinsmore** said he was referring to both the make-up of the committee and who would serve on it. **REP. TAYLOR** asked **Mr. Dinsmore** if he thought new people should come serve or did they want specific people serving. **Mr. Dinsmore** stated they currently have a group of people who are willing to serve on the board, but he realized that representation by individuals may need to include more people.

**REP. TAYLOR** asked **Mr. Dinsmore** if people had requested to be on the committee or the ones that still serve on the committee were the original ones appointed. **Mr. Dinsmore** said he had been involved as long as anyone on the committee and the group they had now was formed by the people who were interested and they were local people. He said he felt they needed "new blood" to serve on the committee.

**REP. SAM ROSE** asked **Mark Simonich** if he was willing in HB 192 to appoint members as was done by his predecessor, Karen Barkley. **Mr. Simonich** stated he did not know how they would deal with the composition of the committee on the Clark Fork. He said it began under the existing state water planning process. He said the committee members from the Clark Fork Basin proceeded under the same venue. The committee members would be appointed or reappointed by the director of the department and during the interim one of their accomplishments is a plan for the long term, such as what the composition of the committee should be. He said in HB 192, what they were suggesting is that it be amended to do what this bill does and he said the department currently had that authority now. He said they were trying to change having the department do that.

**REP. ROSE** asked **Mark Simonich** about the closure of the Teton Basin and the Department of Transportation requested if while building a road if they could siphon tanks of water and if this arrangement was clarified in the bill to allow road construction use of water. **Mr. Simonich** stated this bill would deal with some exceptions within a closed basin for environmental use, but he did not think it would deal specifically with highway construction needs. **REP. ROSE** asked **Mr. Simonich** if the Fish, Wildlife and Parks have a reservation on it. **Mr. Simonich** stated that his understanding was the recommendations from the committee require the reservation application from both the conservation districts and Fish, Wildlife and Parks continue to be suspended throughout the time period of the basin closure.

**Closing by Sponsor:**

**SEN. BROOKE** encouraged the committee to ask her questions in the next few days regarding SB 144. She said one of the mandates was to bring to the committee opposing views and sit down and work them out. She said after her 1991 Legislative Session, Director Karen Barkley asked for recommendations to serve on the committee. They were looking for new members to serve on this committee who could devote the time to effectively serve. She urged the committee to consider the amendments by **Holly Franz** and to keep in mind the ground water issue and that it needed to be a priority with the committee. They want to examine if ground water and surface water play a role in the depletion of water.

**SEN. BROOKE** stated the real work of the continuing committee is to prevent litigation. She wanted this bill to protect existing legitimate water rights and that was what was stressed when the

steering committee came together. **SEN. BROOKE** stated **REP. LARSON** would carry the bill on the House floor. **CHAIRMAN BARNETT** asked **Jo Brunner** if she was referring to the same amendments by **Holly Franz. Jo Brunner** said the amendments she was referring to was during **Larry Brown's** testimony looking at coordinating the language.

## EXECUTIVE ACTION ON SB 207

**Motion:** **REP. RYAN MOVED SB 207 BE CONCURRED IN.**

*{Tape: 2; Side: B; Approx. Counter: 000; Comments: n/a.}*

**Discussion:** **CHAIRMAN BARNETT** stated they had some amendments to SB 207.

**REP. STORY** said he saw the amendments to SB 207. During the taxation meeting that morning nursery operators were concerned that SB 207 may not protect their operation. He said they were not classified as agricultural for taxation purposes. At the same time, they learned feedlots and poultry farms were not considered agricultural. He was afraid of what the amendment would do to the commercial section of the bill and that it might leave "a big hole in the law and leave a bunch of people out that I think they are trying to protect with this law."

**REP. TREXLER** stated on page 2, line 16 if this would address the concerns he had. **REP. STORY** said that it may but the amendment he saw would amend that particular line and that it would take out the reference to the $1,500 and put in classified agricultural for taxation purposes. **REP. TREXLER** stated that they did not have to accept the amendments. **REP. STORY** said that was true.

**CHAIRMAN BARNETT** asked **REP. STORY** if he was speaking about the amendments. **REP. STORY** said because he was unable to attend the hearing for this bill, he did not think he could support it until he was satisfied that it would protect everyone it was intended to protect.

**REP. LARSON** said if **REP. RYAN** would withdraw his motion the committee could defer taking executive action on the bill until a later date.

**REP. RYAN withdrew his motion.**

**CHAIRMAN BARNETT** stated they could take executive action on SB 207 next Thursday. **REP. RYAN** stated he and **REP. STORY** would get together with **SEN. MESAROS** to discuss SB 207.

**Connie Erickson** said another amendment had been offered the day the committee heard SB 207. The amendment was offered by the

# HOUSE OF REPRESENTATIVES

## Agriculture

ROLL CALL DATE 3/7/95

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Rep. Sam Rose Vice Chairman, Majority | ✓ | | |
| Rep. Don Larson, Vice Chairman, Minority | ✓ | | |
| Rep. Jon Ellingson | ✓ | | |
| Rep. Dick Green | ✓ | | |
| Rep. Harriet Hayne | ✓ | | |
| Rep. George Heavy Runner | ✓ | | |
| Rep. Rick Jore | ✓ | | |
| Rep. Gay Ann Masolo | ✓ | | |
| Rep. Judy Rice Murdock | ✓ | | |
| Rep. Karl Ohs | ✓ | | |
| Rep. Jay Stovall | ✓ | | |
| Rep. Bill Ryan | P | | |
| Rep. Dore Schwinden | ✓ | | |
| Rep. Robert Story | P | | |
| Rep. Lila Taylor | ✓ | | |
| Rep. Cliff Trexler | ✓ | | |
| Rep. Ken Wennemar | P | | |
| Rep. Joe Barnett, Chairman | ✓ | | |

EXHIBIT 1
DATE 3/7/95
HB SB144

TESTIMONY IN SUPPORT OF SENATE BILL 144
PRESENTED BY HOLLY FRANZ
ON BEHALF OF THE MONTANA POWER COMPANY
MARCH 7, 1995

My name is Holly Franz. I am testifying on behalf of the Montana Power Company in support of Senate Bill 144. SB 144 is the result of almost four years of work by the Upper Clark Fork River basin steering committee. The steering committee is composed of local interests and users in the Upper Clark Fork River basin, including the Clark Fork River and all its tributaries above the Milltown Dam. I represented the Montana Power Co. on the steering committee. The Montana Power Co.'s interest in the Upper Clark Fork arise from its ownership of the Milltown and Thompson Falls dams and the associated water rights.

There are three basic provisions contained in SB 144. Sections 1 and 2 amend the existing basin closure in the Upper Clark Fork; Section 3 creates a permanent steering committee; and Sections 4 through 10 and 13 create a ten year instream flow pilot project. I will address Sections 1 and 2 of the bill dealing with basin closure.

When the various interests in the Upper Clark Fork began to meet in 1990, the first matter they agreed on was the basin was overappropriated. As a result, legislation was passed by the 1991 legislature closing the Upper Clark Fork River basin to new surface water permits. The only exceptions to the 1991 closure were domestic and Superfund uses, and groundwater. The 1991 legislature directed the Upper Clark Fork River basin steering committee to make recommendations in the management plan on whether to continue, terminate or modify the closure.

The steering committee is suggesting a number of changes to the basin closure. First, the existing closure does not apply to the Blackfoot River or Rock Creek. These areas were originally excluded since they did not have any representatives on the group which proposed the original closure. After meeting with water users in these areas, it is now suggested that they also be included in the closure.

Second, the changes are suggested to the specific exemptions to the closure. The proposed exemptions include stockwater, storage projects, limited Superfund use, power generation at existing hydroelectric dams, and groundwater. I will address each exemption individually. Stockwater is exempted for a number of reasons including the small consumptive nature of this use, the practicality that cows are going to drink from a stream if they can get to it, and a recognition that as pressure is brought to remove cattle from stream banks, ranchers need the opportunity to develop alternative water sources. Storage is exempt because it generally seeks to appropriate water during high runoff, the only time of year when it is available. Power generation at existing

hydroelectric dams is exempt to the extent that more power can be produced without consuming additional water.

The continuing exemption for Superfund was one of the more controversial exemptions. Some people supported continuing this exemption in light of the importance of cleaning up the Clark Fork and concern that if an exemption was not allowed, the federal government would try to preempt state water law. Others opposed it claiming that an unlimited Superfund exemption would allow ARCO and the EPA to apply for large amounts of water for dilution and other uses. Many thought ARCO should purchase existing water rights for its use. The steering committee compromised by allowing the Superfund exception continue for five more years at existing sites as long as water is not used for dilution. The Senate amended the bill to add the additional limitation that no more than 10 cubic feet per second can be appropriated under this exception.

The bill as originally drafted also closed groundwater except for domestic and municipal use. The idea to include groundwater in the basin closure came from members of local watershed committees who felt it was unfair to close surface water while allowing groundwater uses that may impact surface water. This concern was based on the hydrologic connection between surface water and groundwater in the intermountain basins of the Clark Fork. The use of groundwater may intercept water which would otherwise flow underground to the river or may draw water from the river itself. Surface water users were concerned that someone could drill a well in 1994 and in low water periods continue to pump when a surface water user with a much earlier priority date is shut off.

Despite these concerns, the Senate amended Senate Bill 144 to eliminate the closure of groundwater. The Steering Committee is willing to accept this amendment but believes the issue of groundwater will not go away and needs to be looked at. To insure that this occurs, the Steering Committee supports the amendment requiring it to review and prepare a report on the relationship of groundwater and surface water, and the cumulative impacts of groundwater withdrawals in each subbasin. If there is groundwater that can be developed without impacting other water right holders, it should be developed.

The bill does not include a specific exception for domestic or municipal use. However, basin closure should not prevent these uses since groundwater remains open to appropriation. Most municipalities are looking to groundwater due to the restrictive treatment standards for surface water.

There is one more important element of the basin closure. The steering committee and the watershed committees do not pretend to know what will happen in the future. To allow the basin to respond to changes and problems which may arise, the basin closure must be reviewed by the steering committee every five years. While the basin closure may be amended sooner than every five years, it must

EXHIBIT 1
DATE 3-7-95
SB 144

be reviewed at least that frequently. This will ensure that the closure continues to meet the needs of the basin.

I urge your strong support of Senate Bill 144. Thank you.

HJF\02024bjf

EXHIBIT 2
DATE 3/7/95
HB SB 144

Amendments to Senate Bill No. 144
Third Reading Copy

Requested by Sen. Brooke
For the Committee on Agriculture

Prepared by Michael S. Kakuk
March 7, 1995

1. Page 4.
Following: Line 1
Insert: "(d) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;"
Renumber: subsequent subsections

HEADWATERS RC&D AREA, Inc.
Economic Development District
305 W. Mercury, Suite 211
Butte, Montana 59701
(406) 782-7333 • FAX #782-9675

EXHIBIT 3
DATE 3/7/95
HB 36144

RESOLUTION FOR UPPER CLARK FORK BASIN
STEERING COMMITTEE PLANNING

January 26, 1995

WHEREAS, the 1991 Legislature passage of SB 434 authorized the creation of a Steering Committee to draft a "Comprehensive Water Management Plan" for submission to the 1995 legislature; and

WHEREAS, this action was brought on by certain Water Reservation Applications of Fish, Wildlife & Parks for instream flow, and the Granite Conservation District for storage projects in order to avoid going to contested case hearings, and

WHEREAS, studies to date reveal there is little or no unappropriated water available for water right appropriations or permit, therefore making water right reservations not applicable or of no consequence in this basin, and

WHEREAS, the demand for stable water quantity supplies continue to exist for most all present and potential water needs, and

WHEREAS, the potential exists for Water Right Holders to sell, lease, or otherwise manage their rights through so called best management practices, structural and non-structural storage projects, in order to stabilize water flows on a watershed by watershed basis, and to fully compensate water right holders who may be adversely affected, and

WHEREAS, much has been accomplished to date by the Steering Committee in communication toward an analysis of the situation, expression of ideas, etc.,

THEREFORE, it is recommended that a Steering Committee representing all water use interests continue to be authorized by the legislature to function on a basin, sub-basin, or watershed by watershed basis, in collaboration with other resource groups to formulate proposed water resource conservation and development plans for inclusion in an overall state water plan for adoption or modification on a periodic basis by the state legislature.

EXHIBIT 4
DATE 3/7/95
HB SB 144

Mark Simonich

# TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON SENATE BILL 144

## BEFORE THE HOUSE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

MARCH 7, 1995

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS; AMENDING THE DUTIES OF THE UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; PROVIDING FOR A 10-YEAR UPPER CLARK FORK RIVER BASIN INSTREAM FLOW PILOT PROGRAM; PROVIDING FOR THE AWARDING OF REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY IN WATER USE PERMIT AND CHANGE APPROVAL PROCEEDINGS; AMENDING SECTIONS 85-2-102, 85-2-125, 85-2-335, 85-2-336, 85-2-338, 85-2-402, 85-2-404, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

The Department of Natural Resources and Conservation strongly supports the watershed activities of the Upper Clark Fork River Basin Steering Committee. Over the last four years this committee has collaborated with the local community, building consensus, to develop "*The Upper Clark Fork River Basin Water Management Plan*". On February 10, 1995, the Board of Natural Resources approved the adoption of this plan as a State Water Plan Section. This is the first plan section addressing the issues and opportunities specific to one of the state's hydrologic basins.

Senate Bill 144 is the implementing legislation for Upper Clark Fork Management Plan. The Department of Natural Resources and Conservation supports Senate Bill 144.

The Upper Clark Fork River Basin Steering Committee was authorized by legislation passed in 1991. The Steering Committee was to develop a water management plan which

- identified and made recommendations regarding the resolution of water-related issues in the basins[1], and
- developed recommendations concerning the Upper Clark Fork River Basin Closure,

The official appointment of members to the Steering Committee was made by the Director of DNRC as directed by statute.

[1] In 1991, the issue of predominate concern to many of the basin's water interests were the potentially conflicting applications to reserve water for storage or for instream fishery flows.

From DNRC's perspective Senate Bill 144 implements three principle accomplishments of the Upper Clark Fork River Basin Steering Committee.

- Senate Bill 144 resolves the immediate conflicts and issues related to new water right development and instream flows for fishery and water quality protection. A basin closure proposal is the keystone of the Management Plan and the Bill. The basin closure recommendation is also one of the specific issues placed before the Steering Committee by the 1991 legislature. Although considered a permanent closure, an internal watershed specific review and assessment is called for every 5 years. This review was specifically requested by the local Watershed Committees. Through this review the community and the state can reevaluate changing conditions.

- This bill develops a pilot program, specific to this watershed, where willing parties "test" water right leasing to enhance instream flow. The ten (10) year test or pilot program provides 1) additional provisions to address possible third party impacts, 2) establishes additional evaluation of individual leases, and 3) requires an assessment of several potential community wide impacts such as the affect to local property tax. The program will discontinue unless the legislature takes specific action to extend it.

- Most importantly, the watershed stakeholders desire to continue to rely on consensus and their collaborative process to address future water resource issues. The bill recognizes the continued existence of the Upper Clark Fork Steering Committee and updates their duties reflecting the current status of basin water issues.

The Steering Committee has a new model for developing resource management plans and for resolving local conflicts. Their process is collaborative, consensus based, and involves a broad spectrum of local stakeholders.

Steering Committee members live or work in the basin. To further incorporate local interests, the Clark Fork process has relied upon the advice of six local watershed advisory committees. The Steering Committee has effectively incorporated government assistance into this partnership. In the Clark Fork, government is providing technical support to local water interests.

The Upper Clark Fork River Basin Steering Committee is a successful example of the partnerships Governor Racicot called for in his recent State of the State Address.

EXHIBIT
DATE 3/7/95
HB SB 144

# TESTIMONY OF GARY INGMAN
# BEFORE THE HOUSE AGRICULTURE COMMITTEE
# MARCH 7, 1995

Chairman Barnett, Vice-chair Rose and members of the Committee, my name is Gary Ingman and I speak today on behalf of the Montana Department of Health and Environmental Sciences and as the Department's representative on the Upper Clark Fork River Basin Steering Committee for the past three years.

The Montana Department of Health and Environmental Sciences supports Senate Bill 144 because it represents a common sense, consensus-based and fiscally responsible approach to resolving a long history of water use conflicts, chronic water shortages and water quality problems in the upper Clark Fork River Basin. This legislation will bring more than three years of committee work and public participation to fruition and will immediately create opportunities for grassroots-level, collaborative water problem-solving. Senate Bill 144 gives basin residents and local water users the tools to fix problems themselves. It decreases reliance on government agencies and it is largely voluntary in nature.

The Department is keenly aware of the importance of streamflow volume to the protection of water quality. Maintenance of adequate streamflows in the Clark Fork, which will be enhanced by passing this bill, is essential for diluting permitted municipal and industrial wastewater discharges to the Clark Fork. Minimum flows are also important for maintaining acceptable water temperatures and dissolved oxygen levels for cold water aquatic life, which is a designated use of the Clark Fork River under the Montana Water Quality Standards. Any further depletion of streamflows will result in increased wastewater treatment costs and will quickly eliminate improvements in water quality resulting from past and planned pollution control measures. Measures securing long-term protection for instream flows in the upper Clark Fork Basin, like those contained in Senate Bill 144, were recommended in a 1993 three-state water quality management plan for the entire Clark Fork-Pend Oreille Basin which was mandated by the U.S. Congress in the 1987 federal Clean Water Act. Thank you for the opportunity to endorse Senate Bill 144.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 144

DATE 3/7/95 SPONSOR(S) Brooke

**PLEASE PRINT PLEASE PRINT PLEASE PRINT**

| NAME AND ADDRESS | REPRESENTING | BILL | OPPOSE | SUPPORT |
|---|---|---|---|---|
| OLE UELAND | Helena BRCD | 144 | | X |
| Patrick Paque | GSTW | 144 | | |
| JB Brunner | Lic FSC | 144 | | X |
| Steve Fry | Washington Water Power | 144 | | X |
| Jim Dinsmore | Granite CD | 144 | | X |
| Stan Bradshaw | Trout Unlimited | 144 | | ✓ |
| Jim QUIGLEY | STEERING COMMITTEE | 144 | | L |
| Bruce Farling | MT. Trout Unlimited | | | — |
| Nancy Booch | | | | |
| MIKE MURPHY | MT. WATER RES. ASSN | 144 | | X |
| Eugene Manley | Flint Creek Basin | | | X |
| Larry J Brown | Ag Pros. Assoc. | 144 | | X |
| Gary Ingman | MT Dept. of Health, WQD | 144 | | X |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 144

DATE 3/7/95 SPONSOR(S) _____

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| NAME AND ADDRESS | REPRESENTING | BILL | OPPOSE | SUPPORT |
|---|---|---|---|---|
| MARK Simonich | DNRC | | | X |
| Terry Lindsay | MWWDA | | | X as; |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 54th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

**Call to Order:** By **CHAIRMAN JOE BARNETT,** on March 23, 1995, at 3:00 P.M.

### ROLL CALL

**Members Present:**

Rep. Joe Barnett, Chairman (R)
Rep. John "Sam" Rose, Vice Chairman (Majority) (R)
Rep. Don Larson, Vice Chairman (Minority) (D)
Rep. Jon Ellingson (D)
Rep. Dick Green (R)
Rep. Harriet Hayne (R)
Rep. Rick Jore (R)
Rep. Gay Ann Masolo (R)
Rep. Judy Murdock (R)
Rep. Karl Ohs (R)
Rep. George Heavy Runner (D)
Rep. Dore Schwinden (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Kenneth Wennemar (D)

**Members Excused:** Rep. Bill Ryan

**Members Absent:** None

**Staff Present:** Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

| | |
|---|---|
| Hearing: | None |
| Executive Action: | SB 144 BE CONCURRED IN AS AMENDED |
| | SB 389 BE CONCURRED IN AS AMENDED |

### EXECUTIVE ACTION ON SB 144

**CHAIRMAN BARNETT** explained to the committee that **Holly Franz, Montana Power Company,** was not comfortable with the amendment they had passed last week on SB 144. Therefore, the committee could decide if they wanted to reopen executive action on SB 144.

**Motion: REP. ROBERT STORY MOVED THAT SB 144 BE CONCURRED IN.**

**Motion: REP. STORY MOVED THE AMENDMENT.**

**Discussion:**

**REP. DON LARSON** said the amendment would nullify a Senate member who would be upset if he did not get his way. **REP. LARSON** spoke in mild opposition to the amendments and felt there was no need for the amendments. He said the bill was the result of a two-year study and the entire bill was good in its present form.

**REP. GEORGE HEAVY RUNNER** said he was not in support of the amendments.

**REP. ROBERT STORY** spoke in favor of the amendments. He said the first amendment put the language back into the bill that originally stuck the first time they heard the bill. He said the second amendment would bring the leasing portion more in line with the leasing bill of **REP. KNOX'S** bill.

**REP. DORE SCHWINDEN** asked **Connie Erickson** what Section 85-23-08 was. **Connie Erickson** said she did not know but she would research it and report back to the committee.

**REP. KEN WENNEMAR** asked **Holly Franz** what 85-23-08 was. **Ms. Franz** stated it was the section in the code that dealt with the Montana Water Use Act. She said this section allowed an individual to file objections. The objections filed to the Department of Natural Resources would be for permits, changes, and water reservations.

**REP. SCHWINDEN** stated they had a bill before them that would reorganize the Department of Natural Resources. This bill would eliminate the Board of Natural Resources and they currently have decisionmaking ability on the water reservation claims. He said there may be more to the amendments than "what meets the eye."

**Connie Erickson** explained the process of SB 144 once it had been amended in the House and that the bill would be transferred to the Senate. She said if the Senate could not accept the House amendment, the bill would be referred to a conference committee where they would only debate on the disputed amendment.

**REP. CLIFF TREXLER** asked what was being accepted with the proposed amendment number 2. **REP. STORY** stated at the present time, if an owner of a water right had a dispute, he/she would have the right to participate in the process to object in case he/she felt they may be harmed. He said the amendment would clarify if an individual leased their water right, it would be the water right owner's responsibility to object.

**REP. DICK GREEN** asked why they had to pass the amendment and wasn't it already in present law. **REP. LARSON** said **REP. GREEN**

was right. It could be handled in a contractual arrangement between a lessor and a lessee.

**Vote: The motion to adopt the amendment carried with REP. WENNEMAR and REP. HEAVY RUNNER voting no.**

**Motion/Vote: REP. DON LARSON MOVED SB 144 BE CONCURRED IN AS AMENDED. The motion carried unanimously. REP. ROSE gave a proxy vote from REP. RYAN clarifying a yes vote.**

## EXECUTIVE ACTION ON SB 389

**Motion: REP. SAM ROSE MOVED SB 389 BE CONCURRED IN.**

**Motion: REP ROSE MOVED THE AMENDMENT THAT WAS AGREED UPON IN THE HOUSE SUBCOMMITTEE ON SB 389.**

**Discussion:**

**REP. ROSE** thanked **REP. HEAVY RUNNER** and **REP. GREEN** for serving on the subcommittee that worked on the amendments for this bill.

**Connie Erickson** explained the amendments to the gray bill for SB 389. She said the amendments in the gray bill were agreed upon by all the parties involved.

*{Tape: 1; Side: B; Approx. Counter: 000; Comments: None.}*

**Connie Erickson** continued to explain the amendments to SB 389.

**REP. STOVALL** asked about amendment on line 17, page 8, and if the Department of Livestock would have to send an agent to the ranch and physically inspect a dead animal. **Connie Erickson** stated that they would probably have to. **REP. STOVALL** asked if the Department of Livestock would get paid for their services. **Dr. Siroky, Department of Livestock,** said it would be handled by deputies and state veterinarians. He said the game farm operator would be the veterinarian for his/her services.

**REP. STOVALL** asked what were holding orders for. **Connie Erickson** said before a game farm animal could be transported, it would have to have a health inspection and certificate issued.

**REP. ROSE** said if there was a question about any possible disease of an animal, they could put a holding order on the animal. He said this was a good amendment.

**REP. JON ELLINGSON** asked why carnivores and omnivores were exempt in the amendment. **Ms. Erickson** said the Department of Livestock did not want anything to do with carnivores and omnivores. **REP. ROSE** said section 3 stated the Department of Livestock's responsibilities.

# HOUSE STANDING COMMITTEE REPORT

March 24, 1995



Mr. Speaker: We, the committee on **Agriculture, Livestock, and Irrigation** report that **Senate Bill 144** (third reading copy -- blue) **be concurred in as amended.**

Signed: Joe Barnett
*Joe Barnett, Chair*

**Carried by: Rep. Larson**

**And, that such amendments read:**

1. Page 8, line 27.
Strike: "converting"
Insert: "temporarily changing"

2. Page 9.
Following: 21
Insert: "(8) Only the owner of the water right may seek enforcement of the change authorization or object under 85-2-308."
Renumber: subsequent subsections

-END-

Committee Vote:
Yes 18, No 0.

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